

# THE CROATIAN PARLIAMENT

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Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

## DECISION

### PROMULGATING THE CREDIT INSTITUTIONS ACT

I hereby promulgate the Credit Institutions Act passed by the Croatian Parliament at its session on 26 September 2008.

Class: 011-01/08-01/117

No.: 71-05-03/1-08-2

Zagreb, 2 October 2008

The President of the Republic of Croatia  
**Stjepan Mesić**, m.p.

## CREDIT INSTITUTIONS ACT

### I GENERAL PROVISIONS

#### Subject matter

##### Article 1

This Act governs:

- 1) the conditions for the establishment, operation and dissolution of credit institutions with registered offices in the Republic of Croatia, as well as their prudential supervision;
- 2) the conditions under which legal persons with registered offices outside the Republic of Croatia may provide banking and/or financial services in the Republic of Croatia.

#### Credit institution

##### Article 2

(1) 'Credit institution' means a legal person authorised by the competent authority, whose business is:

- to receive deposits and other repayable funds from the public and to grant credits for its own account; or
- to issue means of payment in the form of electronic money (hereinafter: electronic money institution).

(2) A credit institution having its registered office in the Republic of Croatia may, under the conditions laid down in this Act, be established as a bank, savings banks, housing savings bank or an electronic money institution.

(3) The provisions of this Act shall apply to electronic money institutions unless otherwise provided for in the law governing the establishment, operation and dissolution of electronic money institutions.

(4) For the purposes of this Act, the term 'credit institution', where not further qualified by the words 'of a Member State' or 'of a third country', means a credit institution which has its registered office in the Republic of Croatia and is authorised by the Croatian National Bank. Exceptionally, for the purposes of this Title, the term 'credit institution' shall be used for all credit institutions regardless of the country where they have their registered offices. For the purposes of Title XXIII Supervision on a consolidated basis, the term 'subsidiary credit institution' shall be used for any credit institution having the status of a subsidiary credit institution regardless of the country where it has its registered office.

### **Use of name in legal transactions**

#### **Article 3**

(1) The words 'credit institution' and 'bank' or derivatives of these words, if contained in the firm name, may be entered in the register of companies or used in legal transactions only by:

- 1) a legal person authorised by the Croatian National Bank as a bank;
- 2) credit institutions providing services under Article 83 or 87 of this Act;
- 3) credit institutions referred to in Article 85 of this Act;
- 4) members of a group of credit institutions; and
- 5) representative offices of credit institutions of the Member States or third countries which carry out activities within the territory of the Republic of Croatia.

(2) By way of derogation from paragraph (1) of this Article, the words 'credit institution' and 'bank' or derivatives of these words, if contained in the firm name, may be entered in the register of companies and used in legal transactions by other legal persons where provided for in another law.

(3) A legal person authorised as a bank under this Act may enter the words 'savings bank' or derivatives of these words, if contained in the firm name, in the register of companies and use them in legal transactions.

(4) Notwithstanding paragraph (1) of this Article, credit institutions from other Member States may use within the territory of the Republic of Croatia the same name as they use in the home Member State. In the situation where there is already a credit institution operating within the territory of the Republic of Croatia under the same or similar name, the Croatian National Bank may, for the purpose of clarification, require that the name

of a credit institution of another Member State be accompanied by certain explanatory particulars.

### **Banking services**

#### **Article 4**

(1) Banking services are the acceptance of deposits or other repayable funds from the public and the granting of credits for own account from these funds.

(2) Unless otherwise provided for in this Act, 'deposit' means a cash deposit as defined in the Civil Obligations Act.

(3) For the purposes of this Act, the following shall not constitute the acceptance of deposits or other repayable funds from the public referred to in paragraph (1) of this Article:

- 1) receipt of funds that are immediately exchanged for electronic money by an electronic money institution;
- 2) acceptance of deposits or other repayable funds from the Republic of Croatia, units of local and regional self-government of the Republic of Croatia or from any public international body of which the Republic of Croatia is a member, by a legal person other than a credit institution;
- 3) acceptance of deposits or other repayable funds from governments and regional or local governments of the Member States or from any public international body of which one or more Member States are members, by a legal person other than a credit institution;
- 4) acceptance of deposits from its members by a credit union;
- 5) receipt of funds as membership fees, voluntary contributions or similar non-repayable funds by associations;
- 6) receipts from the issuance of debt securities by a legal person, other than a credit institution, by which it finances its core activities, provided its core activity is not the granting of credits; or
- 7) receipt of funds by payment institutions in accordance with a special law.

### **Core and additional financial services**

#### **Article 5**

(1) For the purposes of this Act, core financial services are as follows:

- 1) acceptance of deposits or other repayable funds;
- 2) lending, including consumer credit, mortgage credit and, where permitted by a special law, financing of commercial transactions, including export financing based on the purchase at a discount without recourse of non-current, non-matured receivables collateralised with a financial instrument (forfeiting);
- 3) repurchase of receivables with or without recourse (factoring);
- 4) financial leasing;
- 5) issuance of guarantees or other commitments;

- 6) trading for own account or for the accounts of clients in:
  - money market instruments;
  - transferable securities;
  - foreign exchange, including currency exchange transactions;
  - financial futures and options;
  - exchange and interest-rate instruments;
- 7) money transmission services in the country and abroad in accordance with special laws;
- 8) credit reference services, such as collection, analysis and provision of information on the creditworthiness of legal and natural persons that conduct their business independently;
- 9) issuing and administering other means of payment, if the provision of such services is not considered the provision of services within the meaning of item (7) of this paragraph;
- 10) safe custody services;
- 11) money broking;
- 12) participation in issues of financial instruments as well as the provision of services relating to issues of financial instruments in accordance with the law governing the capital market;
- 13) portfolio management and advice;
- 14) safekeeping of financial instruments and services related to the safekeeping of financial instruments in accordance with the law governing the capital market;
- 15) advice to legal persons on capital structure, business strategy and related issues as well as the provision of services relating to mergers and the acquisition of shares and holdings in other companies; and
- 16) investment and ancillary services and activities prescribed in the special law governing the capital market and not included in services referred to in items (1) to (15) of this paragraph.

(2) For the purposes of this Act, additional financial services are as follows:

- 1) activities related to the sale of insurance policies in accordance with the law governing insurance;
- 2) payment systems management services in accordance with the provisions of a special law;
- 3) services which a credit institution may provide in accordance with the provisions of a special law; and
- 4) other services similar to financial services referred to in paragraph (1) of this Article and listed in the credit institution's authorisation.

### **Mutually recognised services**

#### **Article 6**

(1) For the purposes of this Act, mutually recognised services are:

- 1) mutually recognised banking services, and
- 2) mutually recognised financial services.

(2) Mutually recognised banking services are the services referred to in Article 4 of this Act.

(3) Mutually recognised financial services are the services referred to in Article 5, paragraph (1) of this Act.

### **Competent authority and authorisation**

#### **Article 7**

(1) For the purposes of this Act, 'competent authority' means the authority responsible for the supervision of credit institutions.

(2) Authorisation shall be a legal act issued by the competent authority in the country where the credit institution has its registered office, by which the right to provide banking services is granted to a credit institution.

### **Direct provision of services**

#### **Article 8**

(1) For the purposes of this Act, it shall be deemed that a credit institution of a Member State directly provides mutually recognised services within the territory of another Member State:

- 1) where it concludes legal arrangements within the territory of that Member State, the subject of which are one or more mutually recognised services; or
- 2) where it offers such service within the territory of that Member State to a natural or legal person who has its domicile, normal place of residence or registered office within the territory of that Member State, through its representatives, intermediaries or by some other means.

(2) For the purposes of this Act, it shall be deemed that a credit institution directly provides services within the territory of the Republic of Croatia on a temporary basis where it does not provide mutually recognised services regularly, frequently or on an ongoing basis.

### **Financial institution**

#### **Article 9**

(1) For the purposes of this Act, 'financial institution' means a legal person:

- 1) which is not a credit institution; and
- 2) the exclusive or principal activity of which is to acquire holdings or to carry out one or more core financial services referred to in Article 5, paragraph (1), items (2) to (16) of this Act.

(2) The Croatian National Bank may prescribe the conditions for and the method of determining the principal activity of the financial institution referred to in paragraph (1) of this Article.

### **Financial and mixed-activity holding company**

#### **Article 10**

(1) 'Financial holding company' means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, with at least one subsidiary being a credit institution, and which is not a mixed-activity financial holding company. When determining whether subsidiary undertakings are mainly credit or financial institutions, the determining factors shall be their balance sheet total, amount of capital and other economic criteria that may be prescribed by the Croatian National Bank.

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

### **Ancillary services undertaking**

#### **Article 11**

'Ancillary services undertaking' means a legal person the principal activity of which is to carry out activities directly connected with the provision of services for which the credit institution obtained approval from the competent authority, including property management, managing and administering data-processing systems or any other similar activity which is ancillary to the principal activity of one or more credit institutions.

### **Member State and third country**

#### **Article 12**

(1) For the purposes of this Act, 'Member State' means a Member State of the European Union and a contracting party to the Agreement on the European Economic Area.

(2) For the purposes of this Act, 'third country' means a foreign country that is not a Member State.

### **Home Member State and host Member State**

#### **Article 13**

(1) For the purposes of this Act, 'home Member State' means a Member State in which a credit institution has been authorised by the competent authority.

(2) For the purposes of this Act, 'host Member State' means a Member State other than the home Member State, in which a credit institution provides services through a branch or directly.

**Branch and representative office**  
**Article 14**

(1) For the purposes of this Act, 'branch of a credit institution' means a legally dependent part of a credit institution, as a result of whose operation the credit institution acquires rights and obligations and which provides one or all of the services provided by the credit institution. A branch shall not be a legal person.

(2) For the purposes of this Act, 'representative office of a credit institution' means a legally dependent part of a credit institution which may only carry out activities related to market research, representation and advertising of the credit institution and the providing of information on the credit institution which established it.

**Qualifying holding**  
**Article 15**

For the purposes of this Act, 'qualifying holding' means a direct or indirect holding on the basis of which an investor, whether a natural or legal person, acquires 10 percent or more of the capital or of the voting rights of another legal person, or a direct or indirect holding of less than 10 percent of the capital or of the voting rights of another legal person which makes it possible to exercise a significant influence over the management of that legal person.

**Participation**  
**Article 16**

For the purposes of this Act, 'participation in another legal person' means:

- 1) direct or indirect holdings of 20 percent or more of the capital or of the voting rights of that legal person; or
- 2) holdings in the capital or of the voting rights of that legal person smaller than 20 percent, which have been acquired with the intention to exert influence over its operation, by establishing permanent links with that legal person.

**Indirect holding**  
**Article 17**

(1) For the purposes of this Act, 'indirect holding' means a holding in the capital of a legal person or an acquisition of the voting rights of a legal person through a third party.

(2) For the purposes of this Act, 'indirect holder of shares, holdings or other rights providing him with a share of the capital or the voting rights of a legal person' means:

- 1) a person for whose account another person (a direct holder) has acquired shares, holdings or other rights in a legal person;
- 2) a person connected with a direct holder of shares, holdings or other rights in a legal person in the manner referred to in Article 22 of this Act, and that person's immediate family members; or
- 3) immediate family members of a direct holder.

**Parent and subsidiary**  
**Article 18**

(1) 'Parent' means a legal or natural person who meets one of the following conditions regarding its subsidiary undertaking:

- 1) has a majority of the voting rights in the subsidiary undertaking;
- 2) is a shareholder or a holder of a holding and has the right to appoint or remove a majority of the members of the management or supervisory board or of other management or supervisory bodies;
- 3) has the right to exercise a dominant influence over the subsidiary undertaking pursuant to an entrepreneurial contract, or other contract or agreement under company law;
- 4) has a participation in the subsidiary undertaking and exercises dominant influence over it;
- 5) is a shareholder or a holder of a holding in the subsidiary undertaking pursuant to a contract or agreement with other shareholders or holders of holdings so as to control a majority of the voting rights in that undertaking; or
- 6) has a participation in the subsidiary undertaking and has entered into a management contract with the subsidiary undertaking pursuant to which it directs the business of the subsidiary undertaking.

(2) For the purposes of this Act, all subsidiaries of a subsidiary undertaking shall also be considered subsidiaries of the parent undertaking of that subsidiary.

(3) For the purposes of paragraph (1), items (1), (2), and (5) of this Article, the voting rights and the rights of appointment or removal of any other subsidiary undertaking acting for the account of the parent undertaking or of another subsidiary undertaking shall also be considered the voting rights and the rights of appointment and removal of the parent undertaking.

(4) The voting rights and the rights of appointment or removal of the parent undertaking referred to in paragraph (3) of this Article shall not be considered the voting rights and the rights of appointment or removal of the undertaking which is a subsidiary undertaking or acts for the account of that parent undertaking whose legal holder is that undertaking where either of the following conditions is met:

- 1) the undertaking holds shares in its own name and for the account of a person who is neither its parent nor its subsidiary undertaking; or

2) the undertaking holds shares as collateral and exercises its rights in accordance with the instructions received, or has acquired them in connection with the granting of credits as part of normal business activities and the voting rights are exercised in the interest of the person who pledged shares as security.

(5) The voting rights in the subsidiary undertaking referred to in paragraph (1), items (1), (2), and (5) of this Article shall not be deemed to be the voting rights attaching to the shares held by that undertaking, a subsidiary of that undertaking or by any other person who is the holder of shares for the account of those undertakings.

(6) The Croatian National Bank may, for the purposes of supervision on a consolidated basis, calculation of exposures or supervision of a credit institution, consider a person as the parent undertaking where it establishes that the person exercises a dominant influence over other undertakings.

**Parent credit institution in the Republic of Croatia and parent financial holding company in the Republic of Croatia**

**Article 19**

(1) 'Parent credit institution in the Republic of Croatia' (hereinafter: RC parent credit institution) means a credit institution having its registered office in the Republic of Croatia which has a credit institution or a financial institution as a subsidiary, or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised by the Croatian National Bank or of a financial holding company established in the Republic of Croatia.

(2) 'Parent financial holding company in the Republic of Croatia' (hereinafter: RC parent financial holding company) means a financial holding company having its registered office in the Republic of Croatia which is not itself a subsidiary of a credit institution authorised by the Croatian National Bank or of a financial holding company established in the Republic of Croatia.

**Parent credit institution in the European Union and parent financial holding company in the European Union**

**Article 20**

(1) 'Parent credit institution in the European Union' (hereinafter: EU parent credit institution) means a credit institution having its registered office in a Member State, which has a credit institution or a financial institution as a subsidiary, or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in any Member State or of a financial holding company established in any Member State.

(2) 'Parent financial holding company in the European Union' (hereinafter: EU parent financial holding company) means a financial holding company having its registered

office in a Member State which is not itself a subsidiary of a credit institution authorised in any Member State or of another financial holding company established in any Member State.

**Control**  
**Article 21**

For the purposes of this Act, 'control' means the relationship between a parent undertaking and a subsidiary undertaking or a similar relationship between any natural or legal person and a subsidiary undertaking.

**Close links**  
**Article 22**

'Close links' means a situation in which two or more legal persons or a legal and a natural person are linked in any of the following ways:

- 1) by participation referred to in Article 16, item (1) of this Act;
- 2) by a control relationship; or
- 3) all are controlled by the same third person.

**Undertakings linked by management on a unified basis**  
**Article 23**

'Undertakings linked by management on a unified basis' means undertakings which are not linked in any of the ways referred to in Article 18 of this Act but are linked in one of the following ways:

- 1) the undertakings are on an equal footing and are linked by management on a unified basis pursuant to a contract or provisions of the Articles of Association;
- 2) the undertakings are all controlled by the same third person; or
- 3) the majority of their management or supervisory boards consists of the same persons.

**Group of connected persons**  
**Article 24**

(1) 'Connected persons' means two or more legal or natural persons and members of their immediate family who, unless proven otherwise, constitute a single risk for the credit institution because:

- 1) one of them, directly or indirectly, has control over one or more of the others; or
- 2) they are interconnected in a way which makes it highly probable that if the economic and financial position of one person were to deteriorate or improve the economic and financial position of the other or all of the others would deteriorate or improve, because losses, profits or creditworthiness may be transferred among them.

(2) All persons referred to in paragraph (1) of this Article and all the persons connected with them shall constitute a group of connected persons.

(3) A connected person's immediate family members, for the purposes of this Act, shall be:

- 1) a spouse or a person with whom he/she cohabits in a joint household that under a special law has equal status to a marital union;
- 2) children or adopted children of that person or persons referred to in item (1) of this paragraph who do not have full capacity to act; and
- 3) other persons who do not have full capacity to act and are under the guardianship of that person.

### **Persons acting in concert**

#### **Article 25**

(1) 'Persons acting in concert' means:

- 1) natural or legal persons who cooperate with each other or with the credit institution on the basis of an agreement, either express or tacit, either oral or written, aimed at acquiring shares with voting rights or coordinated exercise of voting rights; or
- 2) legal persons interconnected within the meaning of the provisions of the Companies Act.

(2) The following shall be deemed to be acting in concert:

- 1) persons linked only by circumstances which indicate coordination in the acquisition of shares or joint intent of the persons to acquire shares;
- 2) members of management or supervisory boards of undertakings acting in concert; or
- 3) members of management or supervisory boards and the undertakings in which they are members of these bodies.

(3) Any natural and/or legal persons are deemed to act in concert with a particular legal person when the natural and/or legal persons:

- 1) hold, directly or indirectly, over 25 percent of the initial capital of the legal person;
- 2) have, directly or indirectly, over 25 percent of voting rights at the general meeting of the legal person;
- 3) have the right to direct the business and financial policies of the legal person pursuant to the legal person's Articles of Association or an agreement; or
- 4) have, directly or indirectly, dominant influence in directing the business or adopting decisions.

### **Group of credit institutions**

#### **Article 26**

(1) For the purposes of this Act, 'group of credit institutions' means credit or financial institutions of which at least one has the status of:

- 1) a parent credit institution;
  - 2) a parent financial holding company having at least one subsidiary credit institution;
- or

3) a credit institution which is linked with another legal person within the group of credit institutions by management on a unified basis referred to in Article 23, items (1) and (3) of this Act.

(2) By way of derogation from paragraph (1) of this Article, a group of credit institutions shall be a group of credit institutions as determined by the competent authority within its competence.

### **Regulated market and investment firm**

#### **Article 27**

For the purposes of this Act, the terms 'regulated market' and 'investment firm' shall be used as defined in the law governing the capital market.

## **II STATUS PROVISIONS**

### **II.1 APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT**

#### **Application of the provisions of the Companies Act**

##### **Article 28**

The provisions of the Companies Act shall apply to credit institutions, unless otherwise prescribed in this Act.

### **II.2 INITIAL CAPITAL AND SHARES OF A CREDIT INSTITUTION**

#### **Initial capital of a credit institution**

##### **Article 29**

- (1) The initial capital of a bank shall not be less than HRK 40 million.
- (2) The initial capital of a savings bank shall not be less than HRK 8 million.
- (3) The initial capital of a housing savings bank shall not be less than HRK 20 million.

#### **Shares of a credit institution**

##### **Article 30**

- (1) A credit institution shall be a joint stock company.
- (2) The shares of a credit institution must be registered.
- (3) The shares of a credit institution shall be fully paid-up in cash before the institution is entered into the register of companies, and before any increase in the initial capital is entered into the register.

(4) The shares of a credit institution shall be issued in non-material form.

(5) Holders of shares of a credit institution shall in exercising their rights attached to shares act in the interest of the credit institution.

(6) Where shares of a credit institution are held in a custody account, the custody account must be registered.

### **Credits and guarantees for the acquisition of shares or holdings**

#### **Article 31**

(1) A credit institution may not directly or indirectly grant credits or issue guarantees or other commitments for the acquisition of its own shares or of shares and holdings in undertakings in whose capital it participates with a share of 20 percent or more, unless such acquisition of shares or holdings is to result in the termination of all types of capital links between the credit institution and the undertaking in question.

(2) All legal arrangements the economic substance of which is equivalent to credit shall be deemed to be the granting of credits referred to in paragraph (1) of this Article.

(3) A credit institution may not directly or indirectly grant credits or issue guarantees or other commitments for the acquisition of other financial instruments issued by that credit institution or an undertaking in whose capital it participates with a share of 20 percent or more, which, due to their characteristics, are included in the calculation of the credit institution's own funds.

(4) By way of derogation from paragraph (1) of this Article, a credit institution may grant credits or issue credit guarantees to its employees and employees of undertakings in which it holds participation for the acquisition of shares of that credit institution. The total of such credits and guarantees shall not exceed 10 percent of the credit institution's initial capital.

### **Preferential shares of a credit institution**

#### **Article 32**

The amount of preferential shares shall not exceed one quarter of the credit institution's total initial capital.

### **Prohibition on the acquisition of shares**

#### **Article 33**

(1) Where a credit institution has a qualifying holding in a legal person, such legal person may not acquire a qualifying holding in that credit institution.

(2) Where a legal person has a qualifying holding in a credit institution, such credit institution may not acquire a qualifying holding in that legal person.

(3) The exemptions from the limits on holdings referred to in Article 158 of this Act shall also apply to the limits referred to in paragraph (2) of this Article.

## **II.3 SHAREHOLDERS OF A CREDIT INSTITUTION**

### **Approval to acquire a qualifying holding Article 34**

(1) A legal or natural person, the group of connected persons referred to in Article 24 of this Act and persons acting in concert pursuant to Article 25 of this Act, shall obtain prior approval from the Croatian National Bank for the acquisition of shares of a credit institution on the basis of which they, individually or jointly, directly or indirectly, acquire a qualifying holding in the credit institution.

(2) Holders of a qualifying holding shall obtain prior approval from the Croatian National Bank for each further direct or indirect acquisition of shares of a credit institution on the basis of which their holding would reach or exceed 20 percent, 30 percent or 50 percent of the capital or of the voting rights of a credit institution.

(3) Persons who obtained the prior approval referred to in paragraphs (1) and (2) of this Article shall, within 12 months of the adoption of the decision on the prior approval, complete the acquisition of a qualifying holding and the holding referred to in paragraph (2) of this Article and notify the Croatian National Bank thereof.

(4) Should persons who obtained the prior approval referred to in paragraphs (1) and (2) of this Article take a decision to sell or otherwise dispose of their shares so as to reduce their holdings below the threshold for which they obtained prior approval, they shall notify the Croatian National Bank in advance.

(5) Persons who have obtained the prior approval referred to in paragraphs (1) and (2) of this Article, and who have thereafter sold or otherwise disposed of their shares and thereby reduced their holdings below the threshold for which they obtained prior approval, shall submit an application to the Croatian National Bank for prior approval to acquire a qualifying holding or the holding referred to in paragraph (2) of this Article if, following the expiry of a period of 12 months of the adoption of the decision on the prior approval, they again intend to acquire a qualifying holding or the holding referred to in paragraph (2) of this Article in the amount for which they obtained prior approval.

(6) Before adopting a decision whether to grant prior approval to acquire a qualifying holding or the holding referred to in paragraph (2) of this Article, the Croatian National Bank shall consult the competent supervisory authority if the acquirer is one of the following:

- 1) a credit institution, an insurance or reinsurance undertaking or an asset management company within the meaning of the law governing the operation of investment funds (hereinafter: asset management company), a pension company within the meaning of the law governing the operation of pension funds (hereinafter: pension company), an investment firm authorised in another Member State, or if the acquisition falls within the competence of another supervisory authority;
- 2) the parent undertaking of a credit institution, an insurance or reinsurance undertaking, an asset management company, a pension company, or an investment firm authorised in another Member State, or if the acquisition falls within the competence of another supervisory authority; or
- 3) a natural or legal person controlling a credit institution, an insurance or reinsurance undertaking, an asset management company, a pension company or an investment firm authorised in another Member State, or if the acquisition falls within the competence of another supervisory authority.

(7) Legal persons holding qualifying holdings shall notify the Croatian National Bank of any changes in their status, including participation in mergers, acquisitions or divisions, within eight days of effecting such changes.

(8) A financial holding company or mixed-activity financial holding company which, in accordance with the approval to acquire a qualifying holding, has the status of the parent undertaking of a credit institution, shall notify the Croatian National Bank of any change in its management board within eight days of effecting the change.

(9) The provisions on the percentage of voting rights of the law governing the capital market shall be applied *mutatis mutandis* to determine the percentages referred to in paragraphs (1) and (2) of this Article.

(10) Voting rights or shares which credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis shall not be taken into account when determining the size of a qualifying holding or the holding referred to in paragraph (2) of this Article, provided that those rights are, on the one hand, not used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

### **Application to acquire a qualifying holding**

#### **Article 35**

(1) An application to acquire a qualifying holding shall be accompanied by:

- 1) for an acquirer of a qualifying holding that is a legal person:
  - a) a certificate from the register of companies or other relevant register, in the form of an original or a certified copy;
  - b) a certificate from the register of shareholders (book of shares) or book of holdings, in the form of an original or a certified copy;

- c) a list of natural persons who are the ultimate shareholders of the acquirer or holders of holdings in the acquirer, listing the following data: name, address or domicile, other data for identification, the total nominal value of the shares and percentage of the initial capital of the acquirer, and information referred to in paragraph (1), item (2) under (b) and (c) of this Article;
  - d) a list of persons connected in the manner referred to in Article 24 of this Act with the acquirer and the manner in which they are connected;
  - e) audited financial statements of the acquirer for the two preceding years of business;
  - f) evidence on the availability of funds for the acquisition of a qualifying holding and a description of the method or source of financing;
  - g) a description of the requested approval, including the total nominal value of the shares and percentage of the initial capital of the credit institution in which the qualifying holding is to be acquired, explanation of the objectives to be achieved by the acquisition of the qualifying holding and the strategic direction of the acquirer in relation to holdings in credit and financial institutions;
  - h) a description of the acquirer's activities in relation to the acquisition preceding the application;
  - i) proof that the acquirer has not committed a crime;
  - j) evidence that bankruptcy proceedings have not been initiated or opened against the property of the acquirer;
  - k) an opinion or approval of the competent authority of a credit institution of a Member State or a third country in relation to the proposed acquisition; and
  - l) for an acquirer of a qualifying holding that is a financial holding company, evidence that the criteria referred to in Article 45 of this Act have been met;
- 2) for an acquirer of a qualifying holding who is a natural person:
- a) name, address or domicile, and other data for identification;
  - b) curriculum vitae of the acquirer, listing all companies, and their addresses, with whom he/she is or was employed, of which he/she is or was a member of the management or supervisory board, or in which he/she is or was a holder of a qualifying holding;
  - c) evidence that the person has not been convicted by a final judgement of a crime against the values protected by international law or of one of the following crimes:
    - against the payment system and the security of its operations;
    - relating to the authenticity of documents;
    - relating to breaches of official duties;
    - relating to money laundering; or
    - relating to terrorist financing; and
  - d) documents referred to in item (1) under (d), (f), (g) and (h) of this paragraph.

(2) By way of derogation from paragraph (1), item (1) under (i) and item (2) under (c) of this Article, the Croatian National Bank shall obtain proof from the criminal history records that the domestic natural or legal person has not committed a crime. The Croatian National Bank must provide a reasoned explanation for each request from the records.

(3) Where the acquisition of a qualifying holding may result in dominant influence over or control of the credit institution's operation, in addition to the documents referred to in paragraph (1), item (1) or (2) of this Article, the acquirer shall enclose the following with the application:

- 1) a business strategy of the credit institution in which the qualifying holding is acquired;
- 2) a business plan for the next three years of business, including balance sheets and profit and loss accounts;
- 3) planned changes in the organisational, management and personnel structure of the credit institution;
- 4) a plan of activities regarding the creation of new internal bylaws, or amendments to the existing internal bylaws of the credit institution; and
- 5) a plan of activities regarding the changes to the existing information technology or implementation of new information technology of the credit institution.

(4) In addition to the documents referred to in paragraphs (1) and (3) of this Article, the Croatian National Bank may request additional documentation that it deems necessary to the approval decision, including information prescribed in the law regulating the prevention of money laundering and terrorist financing, which is being collected by the persons subject to that law.

(5) When deciding whether to grant approval to acquire a qualifying holding and the holding referred to in Article 34, paragraph (2) of this Act, the Croatian National Bank shall examine the suitability of the sources of funds which the acquirer intends to use for the acquisition of a qualifying holding in a credit institution.

(6) The Croatian National Bank may, for the purpose of obtaining information necessary to decide whether to grant approval to acquire a qualifying holding, verify the data delivered by the acquirer of a qualifying holding.

### **Decision-making procedure regarding approval to acquire a qualifying holding** **Article 36**

(1) The Croatian National Bank shall acknowledge in writing the receipt of a complete application to acquire a qualifying holding or the holding referred to in Article 34, paragraph (2) of this Act (hereinafter: application) within two working days.

(2) The Croatian National Bank shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the application referred to in paragraph (1) of this Article and all documents required to be attached to the application referred to in Article 35 of this Act, to complete the decision-making procedure regarding the acquisition of a qualifying holding (hereinafter: decision-making procedure). The Croatian National Bank shall notify the applicant of the date of expiry of the decision-making period in the written acknowledgement of receipt referred to in paragraph (1) of this Article.

(3) The Croatian National Bank shall notify the applicant in writing within two working days following the decision on the application and within the time limit referred to in paragraph (2) of this Article.

(4) If the Croatian National Bank fails to adopt a decision on the application within the time limit referred to in paragraph (2) of this Article, the application shall be deemed to have been approved.

(5) By way of derogation from paragraphs (1) to (4) of this Article, if the application to acquire a qualifying holding is submitted together with an application for authorisation, the Croatian National Bank shall adopt a decision on the application within the time limit referred to in Article 329, paragraph (1) of this Act.

(6) If the Croatian National Bank receives two or more applications to acquire a qualifying holding, it shall provide equal treatment to all proposed acquirers.

**Interruption of the decision-making procedure regarding approval to acquire a  
qualifying holding  
Article 37**

(1) The Croatian National Bank may, within 50 working days as from the date of the written acknowledgement of receipt referred to in Article 36, paragraph (1) of this Act, request in writing further information that is necessary to complete the decision-making procedure.

(2) During the period between the date of request for information referred to in paragraph (1) of this Article and the receipt of further information, the decision-making procedure shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the Croatian National Bank for completion or clarification of the information shall not result in interruption.

(3) Exceptionally, the Croatian National Bank may extend the interruption referred to in paragraph (2) of this Article up to 30 working days if the acquirer of a qualifying holding:

- 1) has its domicile or registered office in a third country or is regulated in a third country; or
- 2) is a natural or legal person not subject to supervision pursuant to the provisions of this Act or the regulations of a Member State where the acquirer has its domicile or registered office.

**Deciding on approval to acquire a qualifying holding  
Article 38**

(1) When deciding whether to grant approval to acquire a qualifying holding, the Croatian National Bank shall appraise the suitability and the financial soundness of the acquirer of a qualifying holding against the following criteria:

- 1) the reputation of the acquirer;
- 2) the reputation, appropriateness of skills and experience of any person who will direct the business of the credit institution following the acquisition;
- 3) the financial soundness of the acquirer, in particular in relation to the type of business pursued by the credit institution in which the acquisition is carried out;
- 4) whether the credit institution will be able to comply and continue to comply with the provisions of this Act, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent supervisory authorities and determine the allocation of responsibilities among the competent authorities; and
- 5) whether there are reasonable grounds to suspect that, in connection with the acquisition, money laundering or terrorist financing, within the meaning of regulations on the prevention of money laundering and terrorist financing, is being or has been committed or attempted, or that the acquisition could increase the risk thereof.

(2) The Croatian National Bank shall not impose prior conditions relating to the size of the holding the acquirer proposes to acquire nor examine the application to acquire a qualifying holding in terms of the economic needs of the market.

### **Reasons for refusal of application to acquire a qualifying holding** **Article 39**

The Croatian National Bank shall refuse the application to acquire a qualifying holding where:

- 1) it assesses that the suitability or the financial soundness of the acquirer of a qualifying holding does not comply with the criteria referred to in Article 38 of this Act;
- 2) the acquisition would or could result in a level of concentration in the banking and/or financial services market that could distort free market competition; or
- 3) the acquisition would or could adversely affect the implementation of monetary and foreign exchange policies in the Republic of Croatia.

### **Legal effects of acquisition without approval** **Article 40**

(1) A person acquiring a qualifying holding or the holding in the credit institution referred to in Article 34, paragraph (2) of this Act contrary to the provisions of this Act shall not have the right to exercise any voting rights attached to the shares so acquired.

(2) In the case referred to in paragraph (1) of this Article, the Croatian National Bank shall adopt a decision ordering the sale of the shares so acquired.

### **Withdrawal of approval to acquire a qualifying holding**

## **Article 41**

(1) The Croatian National Bank may withdraw approval to acquire a qualifying holding where:

- 1) a holder of a qualifying holding obtained approval by providing false or inaccurate data;
- 2) a parent credit institution, parent financial holding company or parent mixed-activity holding company possessing a qualifying holding breaches the obligations referred to in Title XXIII of this Act or fails to act in accordance with a decision of the Croatian National Bank or the competent authority of another Member State responsible for supervision on a consolidated basis, ordering him to eliminate deficiencies; or
- 3) circumstances arise referred to in Article 39, item (1) of this Act.

(2) In the case referred to in paragraph (1) of this Article, persons from whom approval to acquire a qualifying holding or the holding in the credit institution referred to in Article 34, paragraph (2) of this Act has been withdrawn shall not have the right to exercise any voting rights attached to the shares covered by the approval.

(3) In the case referred to in paragraph (1) of this Article, the Croatian National Bank shall order the sale of the shares for which the approval was withdrawn.

### **Expiry of approval to acquire a qualifying holding**

## **Article 42**

(1) If an acquirer who has been granted prior approval does not acquire shares of a credit institution so as to reach or exceed a 10 percent holding of the capital or of the voting rights of the credit institution within the time limit referred to in Article 34, paragraph (3) of this Act, the approval shall expire as a whole.

(2) If an acquirer receives approval to acquire a holding larger than 10 percent of the capital or of the voting rights of the credit institution, and does not acquire the approved amount but does acquire at least 10 percent of the capital or of the voting rights of the credit institution within the time limit referred to in Article 34, paragraph (3) of this Act, the approval to acquire the larger amount shall expire.

(3) If, within the time limit referred to in Article 34, paragraph (5) of this Act, an acquirer of a qualifying holding has reduced the holding to below the amount for which prior approval was granted, the approval shall remain in force in the share exceeding the holding referred to in Article 34, paragraphs (1) and (2) of this Act which the acquirer holds at the time of expiry of the said time limit.

## **II.4 MANAGEMENT BOARD AND SUPERVISORY BOARD**

### **Management board**

## **Article 43**

(1) The management board of a credit institution shall have at least two members who direct the business of the credit institution and represent it. One of the members of the management board shall be appointed chairperson of the management board.

(2) The management board shall direct the business of a credit institution from the territory of the Republic of Croatia.

(3) Unless provided otherwise in the Articles of Association, members of the management board of a credit institution shall jointly direct the business of the credit institution and jointly represent it.

(4) The management board of a credit institution may authorise one or more procurators to represent the credit institution, conclude contracts and perform legal acts in the name and for the account of the credit institution, which arise from the services for which the credit institution obtained authorisation from the Croatian National Bank, but they may only do so jointly with at least one member of the credit institution's management board.

(5) When entering the name of a procurator in the register of companies, the credit institution's management board shall also enter the limitations on the powers of the procurator.

(6) The conditions that procurators must fulfil, the manner in which procurators are named, the powers of procurators, and any limitations on actions that procurators may take, shall be defined in the Articles of Association of a credit institution.

(7) At least one member of the management board of a credit institution shall have command of the Croatian language sufficient for performing this function.

### **Employment status of management board members**

#### **Article 44**

The members of a credit institution's management board shall direct the business of the credit institution full time and be employed with the credit institution.

### **Eligibility for management board membership**

#### **Article 45**

(1) Members of the credit institution's management board must meet the following criteria:

- 1) they possess an undergraduate degree pursuant to regulations governing scientific activity and higher education;
- 2) they possess professional qualifications, abilities and experience appropriate and adequate to direct the business of a credit institution;

- 3) they have not held management positions in a credit institution or undertaking against which bankruptcy or compulsory winding-up proceedings have been opened or whose authorisation has been withdrawn;
- 4) they are not members of the supervisory board of that credit institution or the supervisory board of any other credit institution entered in the register of companies in the Republic of Croatia;
- 5) they have not had bankruptcy proceedings opened against their personal property;
- 6) they have a good reputation;
- 7) they have not been convicted by a final judgement of a crime against the values protected by international law or of one of the following crimes:
  - against the payment system and the security of its operations;
  - relating to the authenticity of documents;
  - relating to breaches of official duties;
  - relating to disclosure of a state secret;
  - relating to money laundering; or
  - relating to terrorist financing;
- 8) based on their conduct thus far it may be reasonably concluded that they will perform the duties of members of the credit institution's management board diligently and conscientiously,
- 9) they meet the eligibility criteria for management board members prescribed in the Companies Act; and
- 10) they are not members of the management board or procurators of another undertaking.

(2) The experience referred to in paragraph (1), item (2) of this Article shall mean at least three years experience in management positions in a credit institution or five years experience in directing a business comparable to the activities of credit institutions or other comparable activities.

(3) By way of derogation from paragraph (1), item (3) of this Article, persons who held management positions in an undertaking or a credit institution against which bankruptcy or compulsory winding-up proceedings have been opened or whose authorisation has been withdrawn may be appointed to the management board of a credit institution if the Croatian National Bank assesses that the actions of such persons did not contribute to the events referred to in paragraph (1), item (3) of this Article.

(4) By way of derogation from paragraph (1), item (4) of this Article, members of the supervisory board of a subsidiary credit institution may be appointed to the management board of the parent credit institution.

(5) The Croatian National Bank shall prescribe in detail the eligibility criteria for management board membership referred to in paragraphs (1) and (2) of this Article, the procedure for issuing approvals and the documentation to be enclosed with the application for prior approval for the chairperson or member of the management board.

## **Prior approval for management board members**

### **Article 46**

(1) Only a person who has obtained prior approval from the Croatian National Bank to perform the function of a management board member may be appointed to the credit institution's management board.

(2) An application for the prior approval referred to in paragraph (1) of this Article shall be submitted by the credit institution's supervisory board for a term of office not exceeding five years.

(3) Exceptionally, if the competent court appoints a member of the credit institution's management board pursuant to the provisions of the Companies Act, the appointee must meet the criteria referred to in Article 45 of this Act and may not be appointed for a period exceeding six months.

(4) The application referred to in paragraph (2) of this Article shall include evidence that the criteria referred to in Article 45, paragraphs (1) and (5) of this Act have been met, along with the management board's work programme containing projected financial statements for the term of office for which the board member is to be appointed.

(5) The Croatian National Bank shall obtain proof from the criminal history records that the domestic natural person has not committed a crime. The Croatian National Bank must provide a reasoned explanation for each request from the records.

(6) The Croatian National Bank shall issue the prior approval referred to in paragraph (1) of this Article for the whole proposed term of office. Exceptionally, the Croatian National Bank may issue prior approval for a period shorter than the proposed term of office.

(7) When deciding whether to grant prior approval, the Croatian National Bank may require candidates for management board members to make a presentation detailing how they propose to direct the business of the credit institution and detailing how they propose to manage those activities falling within their personal competence.

(8) The Croatian National Bank shall decide on the approval referred to in paragraph (1) of this Article on the basis of:

- 1) the documentation referred to in paragraph (4) of this Article;
- 2) the presentation referred to in paragraph (7) of this Article;
- 3) data on the final conviction for any violations committed while performing the function of a member of a credit institution's management board and the warnings referred to in Article 50 of this Act; and
- 4) other data and information available to it.

(9) The Croatian National Bank shall refuse the application for prior approval to perform the function of a member of the credit institution's management board if it assesses:

- 1) that the candidate for a management board member does not meet the criteria referred to in Article 45 of this Act; or
- 2) that the data and information referred to in paragraph (8), items (3) and (4) of this Article suggest that the candidate for a management board member is not suitable.

(10) A person who has been granted prior approval to perform the function of a credit institution's management board member shall, before being appointed to the same office with another credit institution, submit a new application for prior approval of the Croatian National Bank. The provisions of paragraphs (2) and (4) to (9) of this Article shall apply *mutatis mutandis* to the approval referred to in this paragraph.

(11) Where the supervisory board wishes to reappoint a person who has already obtained approval, he/she shall once again follow the procedures prescribed in this Act.

(12) The supervisory board of a credit institution shall submit an application for the prior approval referred to in paragraphs (2) or (11) of this Article at least three months prior to the expiry of the term of office of an individual management board member.

(13) In cases where seats on the management board are vacated or where members of the management board are incapable of performing their functions, the supervisory board of the credit institution may appoint its members as deputy management board members on a one-time basis for a period not longer than three months without the approval of the Croatian National Bank.

### **Prior approval for the chairperson of the management board**

#### **Article 47**

(1) Only a person who has obtained prior approval from the Croatian National Bank to perform the function of the chairperson of the management board of a credit institution may be appointed chairperson of the management board.

(2) The provisions of Articles 45 and 46 of this Act shall apply *mutatis mutandis* to the approval to perform the function of the chairperson of the management board.

(3) When deciding whether to grant prior approval, the Croatian National Bank may require a candidate for the chairperson of the management board to make a presentation detailing how they propose to direct the business of the credit institution as a whole.

### **Duties and responsibilities of management board members**

#### **Article 48**

(1) The credit institution's management board shall ensure that the credit institution operates in compliance with:

- 1) professional rules and standards,
- 2) this Act, regulations adopted under this Act, and
- 3) other regulations governing the operation of credit institutions.

(2) The management board shall ensure the implementation of supervisory measures imposed by the Croatian National Bank.

(3) The credit institution's management board shall ensure that the credit institution operates in compliance with risk management rules, and shall in particular:

- 1) establish well defined, transparent and consistent lines of responsibility, which will ensure clear segregation of duties and responsibilities, and prevent conflicts of interest; and
- 2) approve and regularly review the credit institution's strategies and policies for risk management, including the risks arising from the macroeconomic environment in which the credit institution operates and the status of its business cycle.

(4) Members of the credit institution's management board shall be jointly liable to the credit institution for damage arising as a consequence of errors of commission or omission in the performance of their duties, unless they demonstrate that in managing the credit institution they acted with the due diligence of a prudent businessperson.

### **Notification to the supervisory board**

#### **Article 49**

(1) The credit institution's management board shall notify the credit institution's supervisory board in writing and without delay if:

- 1) the liquidity or solvency of the credit institution is jeopardised;
- 2) reasons for expiry or withdrawal of authorisation or for withdrawal of authorisation to provide individual financial services arise;
- 3) the credit institution's financial position changes to the extent that its own funds fall below the minimum capital requirement referred to in Article 110, paragraph (3) or Article 131 of this Act or the minimum capital adequacy ratio referred to in Article 130, paragraph (1) of this Act, or Article 237 of this Act;
- 4) the credit institution exceeds the limit on exposures to a single person due to the reduction of its own funds or increases its exposures in accordance with Articles 141 and 155 of this Act as a result of circumstances beyond its control; or
- 5) the Croatian National Bank or other supervisory authorities take measures against the credit institution within the scope of supervision or oversight.

(2) Members of the credit institution's management board shall notify the credit institution's supervisory board in writing and without delay of:

- 1) their appointment to or removal from the supervisory body of another legal person; and

2) legal arrangements on the basis of which management board members or their immediate family members have, directly or indirectly, acquired shares or holdings in a legal person on the basis of which management board members together with their immediate family members have acquired a qualifying holding in that legal person or on the basis of which their holdings have been reduced below the qualifying holding threshold.

**Warning to a management board member**  
**Article 50**

The Croatian National Bank shall issue a written warning to the responsible person of the credit institution's management board:

- 1) where the credit institution fails to fully and in a timely fashion implement the actions laid down in a memorandum of understanding concluded in accordance with this Act; or
- 2) where the credit institution fails to fully and in a timely fashion implement supervisory measures laid down in a decision of the Croatian National Bank.

**Withdrawal of approval for the chairperson or a member of the management board**  
**Article 51**

(1) The Croatian National Bank shall withdraw approval to perform the function of the chairperson or a member of the credit institution's management board:

- 1) where the chairperson or a member of the management board obtained approval by providing false or inaccurate documentation or through false presentation of data relevant for performing the function of the chairperson or a member of the management board;
- 2) where the chairperson or a member of the management board breaches the provisions of the Companies Act on the duties of the management board, resulting in the removal of the management board member;
- 3) where the chairperson or a member of the management board no longer meets the criteria referred to in Article 45, paragraph (1) of this Act; or
- 4) where the chairperson or a member of the management board receives his or her third warning within a period of five years.

(2) The period of five years referred to in paragraph (1), item (4) of this Article shall run for each received warning as of the date of its issuance.

(3) The Croatian National Bank may withdraw approval to perform the function of the chairperson or a member of the credit institution's management board:

- 1) where the chairperson or a member of the management board fails to ensure the implementation or fails to implement supervisory measures imposed by the Croatian National Bank;
- 2) where the chairperson or a member of the management board seriously breaches the duties of a management board member referred to in Article 48 of this Act;

- 3) where the chairperson or a member of the management board breaches the duties of a management board member referred to in Article 49 of this Act; or
- 4) where the credit institution that obtained the permission referred to in Article 128, paragraph (1) of this Act does not comply with terms of the permission.

(4) It shall be deemed that the chairperson or a member of the management board has seriously breaches the obligations referred to in Article 48 of this Act when his or her actions jeopardise the credit institution's liquidity or solvency.

(5) In carrying out the procedure referred to in paragraphs (1) and (3) of this Article, the Croatian National Bank shall take measures of an appropriate scope and nature to verify whether there are facts and circumstances referred to in paragraphs (1) and (3) of this Article warranting withdrawal of approval.

(6) If the Croatian National Bank withdraws approval to perform the function of the chairperson or a member of a credit institution's management board, the supervisory board of the credit institution shall without delay adopt a decision to remove from office the chairperson or a member of the management board.

(7) When the procedure for withdrawal of approval to perform the function of the chairperson or a member of the credit institution's management board has been initiated due to violations of risk management rules and regulations because of which a procedure for withdrawal of the credit institution's authorisation has also been initiated, the Croatian National Bank may join these two procedures.

(8) Prior approval for the chairperson or a member of the management board shall expire if:

- 1) the designated person is not appointed to office or does not assume the office to which the approval relates within six months of the approval;
- 2) the term of office to which the approval relates expires, on the date of expiry of the term of office; or
- 3) the contract of employment with the credit institution of the person in office expires, on the date of expiry of the contract.

### **Supervisory board members**

#### **Article 52**

(1) The following persons may not be appointed members of the credit institution's supervisory board:

- 1) persons connected in the manner referred to in Article 22 of this Act with legal persons in which the credit institution holds more than 5 percent of the initial capital or of the voting rights;
- 2) persons who are members of the supervisory or management board of another credit institution having its registered office inside or outside the Republic of Croatia or a financial institution or of another financial holding company; or

3) persons whose liabilities towards the credit institution exceed their claims against and holdings in the credit institution or who are connected in the manner referred to in Article 22 of this Act with legal persons whose liabilities towards the credit institution exceed their claims against and holdings in the credit institution, where the difference between the total liabilities towards the credit institution and total claims and holdings of those persons and their connected persons in that credit institution exceeds 2 percent of the credit institution's initial capital or HRK 2 million; or

4) persons who cannot be appointed to the supervisory board pursuant to the provisions of the Companies Act.

(2) The prohibition referred to in paragraph (1), items (1) and (2) of this Article shall not apply to persons who are members of the supervisory or management board of an undertaking within the same group of credit institutions.

(3) Persons appointed to the supervisory board of a credit institution shall possess appropriate professional knowledge and sufficient experience to perform the activities within their competence.

(4) The credit institution's supervisory board shall have at least one independent member.

(5) Employees of a credit institution may not be appointed to the supervisory board of the credit institution.

### **Competence of the supervisory board**

#### **Article 53**

In addition to the competence of the supervisory board under the Companies Act, the credit institution's supervisory board shall have the following competences:

- 1) to give approval to the management board for the credit institution's business policy;
- 2) to give approval to the management board for the credit institution's financial plan;
- 3) to give approval to the management board for the credit institution's risk management and exposure strategies and policies;
- 4) to give approval to the management board for the credit institution's strategies and procedures for assessing the adequacy of internal capital;
- 5) to give approval to the management board for the bylaw establishing and ensuring the sound operation of internal control systems;
- 6) to give approval to the management board for the bylaw on internal audit and the annual internal audit work plan; and
- 7) to adopt decisions concerning other matters laid down in this Act.

### **Duties and responsibilities of supervisory board members**

#### **Article 54**

(1) In addition to the duties and responsibilities laid down in the Companies Act, members of the supervisory board shall:

- 1) give opinions on the findings of the Croatian National Bank and other supervisory authorities relating to supervisory procedures and examination of the credit institution within 30 days of receipt of a report on examination findings from the Croatian National Bank or an examination report from other supervisory authorities;
- 2) supervise the adequacy of procedures and effectiveness of internal audit activities;
- 3) state their opinions on semi-annual internal audit reports; and
- 4) immediately notify the Croatian National Bank of the following:
  - their appointment to or removal from the management or supervisory bodies of other legal persons; or
  - legal arrangements on the basis of which supervisory board members or their immediate family members have, directly or indirectly, acquired shares or holdings in a legal person on the basis of which the supervisory board members together with their immediate family members have acquired a qualifying holding in that legal person or on the basis of which their holdings have been reduced below the qualifying holding threshold.

(2) Members of the credit institution's supervisory board shall be jointly liable to the credit institution for damage arising as a consequence of errors of commission or omission in the performance of their duties, unless they demonstrate that in performing their supervisory duties in connection with the management of the credit institution they acted with the due diligence of a prudent businessperson.

**Eligibility for membership in the management board of a financial holding company  
in the Republic of Croatia  
Article 55**

The provisions of Article 45 of this Act shall apply *mutatis mutandis* to members of the management board of a financial holding company which has its registered office in the Republic of Croatia.

**III PROVISION OF BANKING AND/OR FINANCIAL SERVICES**

**III.1 PROVISION OF BANKING SERVICES**

**Provision of banking services  
Article 56**

Banking services within the territory of the Republic of Croatia may be provided by:

- 1) credit institutions with registered offices in the Republic of Croatia authorised by the Croatian National Bank to provide banking services;
- 2) credit institutions of the Member States that have established branches within the territory of the Republic of Croatia in accordance with this Act or have been authorised to provide services directly within the territory of the Republic of Croatia; and

3) branches of third-country credit institutions authorised by the Croatian National Bank to provide banking services within the territory of the Republic of Croatia.

**Prohibition on the acceptance of deposits or other repayable funds from the public**  
**Article 57**

Persons other than those referred to in Article 56 of this Act shall be prohibited from accepting deposits and other repayable funds from the public in the Republic of Croatia.

**Prohibition on carrying out activities and providing services**  
**Article 58**

A credit institution shall not carry out as its main business activity activities other than banking or financial services for which it has been authorised by the competent authority, and ancillary services.

**III.2 AUTHORISATION TO PROVIDE BANKING AND/OR FINANCIAL SERVICES**

**Authorisation**  
**Article 59**

(1) A credit institution shall receive authorisation from the Croatian National Bank to operate as a bank, savings bank, housing savings bank or an electronic money institution (hereinafter: authorisation).

(2) The authorisation referred to in paragraph (1) of this Article shall include authorisation to provide banking services.

(3) The authorisation referred to in paragraph (1) of this Article may also include authorisation to provide core and additional financial services (hereinafter: authorisation to provide financial services).

(4) All subsequent authorisations obtained by a credit institution pursuant to paragraph (3) of this Article shall be considered integral parts of the authorisation referred to in paragraph (1) of this Article.

(5) After a credit institution obtains authorisation, it may be entered in the register of companies.

**Authorisation to provide financial services**  
**Article 60**

(1) A credit institution which has its registered office in the Republic of Croatia, or a branch of a third-country credit institution, shall obtain authorisation from the Croatian

National Bank to provide financial services before it may enter the financial services it intends to provide in the register of companies.

(2) The Croatian National Bank shall decide on the authorisation referred to in paragraph (1) of this Article at the same time as it decides on the authorisation of the credit institution, unless the application for the authorisation referred to in this Article is submitted after the credit institution referred to in paragraph (1) of this Article has been granted authorisation.

### **Other authorisations**

#### **Article 61**

(1) A credit institution that acquires another credit institution having its registered office inside or outside the Republic of Croatia or other legal person having its registered office inside or outside the Republic of Croatia shall obtain authorisation from the Croatian National Bank (hereinafter: authorisation for acquisition) prior to the entry of the decision on acquisition in the register of companies.

(2) Authorisation for acquisition from the Croatian National Bank shall be required for a credit institution having its registered office inside or outside the Republic of Croatia to be acquired by another credit institution.

(3) The acquisitions referred to in paragraphs (1) and (2) of this Article shall include the transfer of all assets and liabilities.

(4) Credit institutions may merge with credit institutions having their registered offices inside or outside the Republic of Croatia or with other legal persons having their registered offices inside or outside the Republic of Croatia provided they have obtained authorisation for merger from the competent authorities of all participants in the merger (hereinafter: authorisation for merger) and that the merger results in the formation of a new credit institution. Prior to the entry in the register of companies, the new credit institution having its registered office in the Republic of Croatia needs to be authorised by the Croatian National Bank. On the date of the entry of the new credit institution in the register of companies or other relevant register, credit institutions participating in the merger shall cease to exist and the authorisations they obtained from the competent authorities shall expire.

(5) A credit institution may be divided by transferring all its assets to two or more new credit institutions formed for that purpose, having their registered offices inside or outside the Republic of Croatia. It shall obtain authorisation for division from the Croatian National Bank (hereinafter: authorisation for division by formation) prior to the entry of the new credit institutions in the register of companies or other relevant register. On the date of the entry of the new credit institutions in the register of companies or other relevant register, the credit institution being divided shall cease to exist and the authorisations it obtained from the Croatian National Bank shall expire.

(6) A credit institution that is divided by transferring all its assets to two or more existing credit institutions having their registered offices inside or outside the Republic of Croatia shall obtain authorisation for division from the Croatian National Bank (hereinafter: authorisation for division by acquisition) prior to the entry of the decision on division in the register of companies.

(7) A credit institution may split off one or more parts of its assets by transferring them to one or more new credit institutions formed for that purpose, having their registered offices inside or outside the Republic of Croatia. It shall obtain authorisation for split-off from the Croatian National Bank (hereinafter: authorisation for disposal by formation) prior to the entry of the decision on split-off in the register of companies.

(8) A credit institution that splits off one or more parts of its assets by transferring them to one or more existing credit institutions having their registered offices inside or outside the Republic of Croatia shall obtain authorisation for split-off from the Croatian National Bank (hereinafter: authorisation for disposal by acquisition) prior to the entry of the decision on split-off in the register of companies.

(9) A credit institution that intends to transfer a portion of its assets and the same proportion of its liabilities to another credit institution having its registered office inside or outside the Republic of Croatia shall obtain authorisation from the Croatian National Bank before concluding such a contract.

(10) The Croatian National Bank may prescribe in detail the conditions for and the manner of obtaining the authorisations referred to in this Article.

### **Refusing applications for other authorisations**

#### **Article 62**

The Croatian National Bank shall refuse any of the applications for authorisation referred to in Article 61, paragraphs (1), (2) and (4) to (9) of this Act where this could lead to any of the following in the Republic of Croatia:

- 1) the disruption of the safety and soundness of any single credit institution or of the stability of the financial system as a whole;
- 2) concentration in the banking and financial services market that would be likely to distort free market competition; or
- 3) adverse effects on the implementation of monetary and foreign exchange policies.

### **Application for authorisation**

#### **Article 63**

(1) An application for authorisation shall be accompanied by:

- 1) the Articles of Association in the form of a certified copy of a notarial deed;

- 2) a business plan for the first three years of business, including balance sheets, profit and loss accounts, the types of business planned, the appropriate organisational, technical and personnel structure of the credit institution, accounting policies and the organisation of the internal audit function;
- 3) an application to acquire a qualifying holding referred to in Article 35 of this Act and documentation referred to in Article 35, paragraphs (1) and (3) of this Act;
- 4) the application referred to in Article 46, paragraph (2) and Article 47 of this Act with a proposal from the supervisory board members and documentation referred to in Article 46, paragraph (4) of this Act;
- 5) evidence on the initial capital for the credit institution to be established;
- 6) an opinion or approval of the competent authority of a Member State or the competent authority of a third country on the credit institution of a Member State or a third country intending to establish a credit institution in the Republic of Croatia; and
- 7) a relevant legal act of the competent authority authorising the provision of specific financial services where so required by the regulations governing the provision of specific financial services set out in the credit institution's business plan.

(2) Where a credit institution intends to provide financial services in addition to banking services, it shall specify the types of financial services it intends to provide in the application for authorisation.

(3) Where a credit institution that has already obtained authorisation wishes to provide financial services additional to those for which it has been authorised, it shall enclose the documentation referred to in paragraph (1), items (2) and (7) of this Article with an application for authorisation to provide these financial services as well as an explanation of the effect of new services on the credit institution's balance sheet and profit and loss account, organisational and personnel structure, and accounting and other policies.

(4) A credit institution intending to provide additional financial services referred to in Article 5, paragraph (2), items (2) and (3) of this Act, shall deliver to the Croatian National Bank documentation prescribed in a special law.

(5) The Croatian National Bank may also request other documentation evidencing compliance with the personnel, technical and organisational requirements for the provision of services to which the application for authorisation relates.

(6) Prior to granting the authorisation referred to in paragraph (1) of this Article, the Croatian National Bank shall consult and exchange information with the competent authorities of the Member States pursuant to Article 34, paragraph (6) of this Act, in particularly regarding the suitability of the acquirer of a qualifying holding, reputation, appropriateness of skills and experience of management board members of undertakings within the same group.

**Linked application decisions**  
**Article 64**

The Croatian National Bank shall simultaneously decide on the following applications when issuing authorisations:

- 1) the application to provide banking services;
- 2) the application to acquire a qualifying holding;
- 3) the application for the chairperson or a member of the management board; and
- 4) the application to provide financial services referred to in Article 5 of this Act, if the credit institution submitted an application for authorisation to provide such services at the same time as submitting an application for authorisation.

### **Refusing applications for authorisation**

#### **Article 65**

The Croatian National Bank shall refuse an application for authorisation:

- 1) if any of the reasons referred to in Article 39 of this Act arise;
- 2) if the exercise of supervision of the credit institution's operation pursuant to the provisions of this Act may be made difficult or prevented by close links between the credit institution and other legal or natural persons;
- 3) if the exercise of supervision of the credit institution's operation pursuant to the provisions of this Act may be made difficult or prevented by close links between the credit institution and other legal or natural persons with registered offices or domicile or normal place of residence in a third country whose regulations prevent the exercise of supervision or where there are other reasons preventing the exercise of supervision;
- 4) if the persons proposed for the chairperson or members of the credit institution's management board do not meet the criteria referred to in Article 45, paragraphs (1) and (5) or Article 47 of this Act;
- 5) if it is evident that the credit institution is not organised in accordance with this Act or if the conditions for the operation of credit institutions laid down in this Act or regulations adopted under this Act have not been met;
- 6) if it is evident that the credit institution would neither have physical presence in the Republic of Croatia nor would its business be directed from the territory of the Republic of Croatia (shell bank);
- 7) if the provisions of the credit institution's Articles of Association are contrary to this Act or regulations adopted under this Act;
- 8) if it is evident from the documentation and from other available information that the credit institution fails to meet the personnel, organisational and technical requirements for the provision of banking and/or financial services in the manner and scope envisaged in its business plan; or
- 9) if it is evident from the application and the accompanying documentation that the credit institution fails to meet other requirements for the provision of the banking and/or financial services covered by the application for authorisation.

### **Expiry of authorisation**

#### **Article 66**

(1) Authorisation shall expire on the date:

- 1) of the opening of the voluntary winding-up of a credit institution;
- 2) of the adoption of a decision to open bankruptcy proceedings against a credit institution;
- 3) of delivery to a credit institution of a decision to withdraw authorisation;
- 4) of the entry of a new credit institution in the register of companies, in case of a merger of credit institutions; or
- 5) of the removal of a credit institution from the register of companies, in cases referred to in Article 61, paragraphs (2), (4) and (5) of this Act.

(2) Authorisation to provide financial services and all other authorisations granted to a credit institution shall expire at the same time as the credit institution's authorisation.

### **Reasons for withdrawal of authorisation**

#### **Article 67**

(1) The Croatian National Bank shall withdraw authorisation:

- 1) where a credit institution does not commence its activities within 12 months of the issue of authorisation;
- 2) where a credit institution ceases to provide banking services for more than six months;
- 3) where a credit institution no longer meets the conditions under which authorisation was granted;
- 4) where a credit institution obtained authorisation on the basis of false or inaccurate documentation or false presentation of data relevant to its operation; or
- 5) where reasons arise for a decision to initiate the compulsory winding-up of a credit institution.

(2) The Croatian National Bank may withdraw authorisation:

- 1) where a credit institution fails to meet own funds or internal capital requirements and other operating conditions in accordance with regulations on risk management;
  - 2) where a credit institution repeatedly fails to meet reporting requirements of the Croatian National Bank in a timely and accurate manner within a three year period;
  - 3) where a credit institution prevents supervision of its operation in any manner whatsoever;
  - 4) where a credit institution fails to implement supervisory measures imposed by a decision of the Croatian National Bank;
  - 5) where a measure referred to in Article 236, paragraph (1), item (1) of this Act is imposed on a credit institution and the supervisory board fails to remove a member or members of the management board from office and appoint new members within the prescribed period;
  - 6) where there are reasons for withdrawal of authorisation to acquire a qualifying holding referred to in Article 41 of this Act;
  - 7) where a credit institution fails to meet the requirements relating to deposit insurance;
- or

8) where a credit institution fails to meet the technical, organisational, personnel and other requirements for the provision of banking services.

(3) The Croatian National Bank shall adopt a decision on the unavailability of deposits if it establishes that, as a result of its financial situation, the credit institution is not or will not in the near future be able to repay deposits that are due and payable as defined in the law governing deposit insurance.

(4) The Croatian National Bank shall adopt the decision referred to in paragraph (3) of this Article within 21 days of establishing that the credit institution failed to repay deposits that are due and payable.

(5) In cases where pursuant to Article 66, paragraph (1), items (1) and (3) of this Act a credit institution's authorisation expired, the Croatian National Bank may adopt a decision on the unavailability of deposits if it establishes the existence of reasons referred to in paragraph (3) of this Article.

(6) The Croatian National Bank shall without delay deliver the decision referred to in paragraph (3) of this Article to the institution responsible for deposit insurance and to other competent and supervisory authorities and publish it in the Official Gazette.

### **Decision to withdraw authorisation**

#### **Article 68**

(1) The Croatian National Bank shall deliver its decision to withdraw authorisation to the credit institution within three days of the adoption of the decision.

(2) The Croatian National Bank shall publish the decision to withdraw authorisation in the Official Gazette, deliver it to the competent commercial court and the institution responsible for deposit insurance, and issue a press release thereon.

### **Refusing applications for authorisation to provide individual financial services**

#### **Article 69**

The Croatian National Bank may refuse an application for authorisation to provide individual financial services:

1) where it is evident from the documentation and other available information that the credit institution fails to meet the technical, personnel, organisational and other requirements for the provision of individual types of core and additional financial services;

2) where the Croatian National Bank has imposed supervisory measures on the credit institution and the introduction of a new service could adversely affect the implementation of these supervisory measures; or

3) where the credit institution fails to meet special requirements for the provision of financial services laid down in any other regulation governing the provision of financial services envisaged in the credit institution's business plan.

### **Withdrawal of authorisation to provide individual financial services**

#### **Article 70**

(1) Where a credit institution ceases to meet the technical, personnel, organisational and other requirements for the provision of individual types of financial services, the Croatian National Bank may adopt a decision on withdrawal of authorisation to provide those financial services for which the credit institution no longer meets the requirements.

(2) The Croatian National Bank shall adopt a decision on withdrawal of authorisation to provide all or individual financial services if the credit institution no longer meets the requirements laid down in other regulations governing the provision of financial services.

(3) The provisions of Article 68 of this Act shall apply *mutatis mutandis* to withdrawal of authorisation to provide financial services.

### **Market competition**

#### **Article 71**

(1) The Croatian National Bank shall carry out administrative and expert activities relating to the protection of market competition in the banking services market and in the financial services market when such services are provided by credit institutions.

(2) When carrying out the activities referred to in paragraph (1) of this Article, the Croatian National Bank shall apply *mutatis mutandis* the regulations governing the rules and the system of measures for the protection of market competition.

(3) Where it is established that market competition in the relevant market has been distorted, the Croatian National Bank shall take measures to ensure effective market competition.

(4) When carrying out the activities referred to in paragraph (1) of this Article, the Croatian National Bank shall request the opinion of the body responsible for the protection of market competition.

(5) The Croatian National Bank shall assess whether the concentrations arising from acquisition of shares of credit institutions are permissible regardless of the level of income of the participants in the concentration.

### **III.3 PROVISION OF MUTUALLY RECOGNISED SERVICES OUTSIDE THE TERRITORY OF THE REPUBLIC OF CROATIA BY CREDIT INSTITUTIONS WITH REGISTERED OFFICES IN THE REPUBLIC OF CROATIA**

#### **III.3.1 Provision of services within the territory of another Member State**

##### **Provision of services in another Member State**

##### **Article 72**

(1) A credit institution having its registered office in the Republic of Croatia or a financial institution having its registered office in the Republic of Croatia that meets the conditions referred to in Article 82, paragraph (1) of this Act, may, under the conditions laid down in this Act, provide mutually recognised services for which it is authorised in the Republic of Croatia through a branch or directly within the territory of another Member State.

(2) A credit institution having its registered office in the Republic of Croatia, may, under the conditions laid down in this Act, provide additional financial services within the territory of another Member State through a branch or directly where so permitted by the regulations of the host Member State and where authorised for the provision of such services by the Croatian National Bank.

##### **Provision of services by a credit institution in another Member State through a branch**

##### **Article 73**

(1) A credit institution having its registered office in the Republic of Croatia that intends to establish a branch within the territory of another Member State shall submit an application for authorisation to the Croatian National Bank, stating the Member State where it intends to open the branch and shall enclose with the application:

- 1) a business plan for the first three years of business, setting out the types and the scale of services it intends to provide through the branch and the organisational structure of the branch;
- 2) the address in the host Member State from which the Croatian National Bank may obtain documentation on the branch; and
- 3) the names and addresses of natural persons who will be responsible for directing the business of the branch.

(2) The Croatian National Bank may request additional documentation within one month of receipt of the application referred to in paragraph (1) of this Article. If the Croatian National Bank requests additional documentation, the date of receipt of the complete application shall be deemed the delivery date.

(3) The Croatian National Bank shall decide on the application of the credit institution for the establishment of a branch (hereinafter: authorisation to establish a branch in a Member State) within three months of the delivery date of the complete application.

(4) The Croatian National Bank shall notify the competent authority of the host Member State without delay of the authorisation and the enclosed data referred to in paragraph (1) of this Article and of the information on own funds and capital requirements of the credit institution, and shall notify the credit institution thereof.

(5) The Croatian National Bank shall refuse the credit institution's application if, on the basis of all available information, it assesses that:

- 1) the credit institution does not have the appropriate organisational, technical and personnel structure or the adequate financial position to provide the planned scale of services in the Member State in question through a branch;
- 2) the application to form a branch represents an attempt to evade stricter rules and regulations in force in the Republic of Croatia; or
- 3) this could jeopardise the safety and stability of the credit institution's operation.

(6) The Croatian National Bank may prescribe in detail the authorisation procedure referred to in paragraph (3) of this Article.

**Provision of services by financial institutions in another Member State through a  
branch  
Article 74**

(1) If a financial institution whose registered office is in the Republic of Croatia and which is a subsidiary of a credit institution which has its registered office in the Republic of Croatia meets the conditions referred to in Article 82, paragraph (1) of this Act and intends to provide mutually recognised financial services within the territory of another Member State through a branch, the parent credit institution of the said financial institution shall notify the Croatian National Bank thereof.

(2) The parent credit institution shall enclose with the notification referred to in paragraph (1) of this Article:

- 1) documentation verifying compliance with the conditions referred to in Article 82, paragraph (1) of this Act;
- 2) data on the amount of own funds or other prescribed form of capital of the financial institution; and
- 3) authorisation by the supervisory authority, where required, to establish a branch of the financial institution in another Member State.

(3) The Croatian National Bank may request additional documentation within one month of receipt of the notification referred to in paragraph (1) of this Article. If the Croatian National Bank requests additional documentation, the date of receipt of the complete application shall be deemed the delivery date.

(4) The Croatian National Bank shall decide whether the financial institution meets the conditions referred to in Article 82, paragraph (1) of this Act within three months of the delivery date of the complete documentation.

(5) The Croatian National Bank shall deliver, without delay, the notification referred to in paragraph (1) of this Article and a certificate of compliance to the competent authority of the host Member State and enclose data on the amount of own funds or other prescribed form of capital, the sum of consolidated own funds and consolidated capital requirements of the group of credit institutions in the Republic of Croatia (hereinafter: a group of credit institutions in the RC) of which that financial institution is a member.

### **Commencement of the provision of services through a branch**

#### **Article 75**

(1) A credit institution that has been authorised by the Croatian National Bank to establish a branch in another Member State may begin to provide services through a branch within the territory of another Member State:

- 1) from the date it receives the notification from the competent authority of the host Member State of the conditions under which activities are to be carried out in that Member State in the interest of the general good; or
- 2) following the expiry of a period of two months of receipt by the competent authority of the host Member State of the notification and documentation referred to in Article 73, paragraph (3) of this Act.

(2) Where a credit institution that has been authorised by the Croatian National Bank to establish a branch in another Member State intends to establish any further branches, it shall notify the Croatian National Bank. The provisions of Article 73 of this Act shall not apply in such cases.

(3) The provisions of this Article shall apply *mutatis mutandis* to the financial institution referred to in Article 74 of this Act.

### **Changes in branch data**

#### **Article 76**

A credit institution that has been authorised to establish a branch in another Member State or a parent credit institution of the financial institution referred to in Article 74 of this Act that intends to change any of the data referred to in Article 73, paragraph (1) or Article 74, paragraph (2) of this Act, shall, at least one month before effecting the change, notify the Croatian National Bank and the competent authority of the host Member State thereof.

### **Withdrawal of authorisation to establish a branch in another Member State**

## **Article 77**

(1) The Croatian National Bank shall withdraw authorisation to establish a branch in another Member State:

- 1) where the branch does not commence its activities within six months of receiving authorisation;
- 2) where the competent authority of the host Member State has prohibited the credit institution from providing services within its territory;
- 3) where the credit institution obtained authorisation to establish a branch on the basis of false or inaccurate data, which were relevant for obtaining authorisation to establish a branch; or
- 4) where the branch does not engage in activities covered by the authorisation for more than six months.

(2) The Croatian National Bank may withdraw authorisation to establish a branch in another Member State:

- 1) where the credit institution no longer meets the organisational, technical and personnel requirements relating to the services it provides;
- 2) where the credit institution fails to meet the requirements relating to insurance of deposits with the branch;
- 3) where the credit institution does not comply with the regulations of the host Member State in the operation of the branch; or
- 4) where the geographical distribution of the provision of services indicates that the credit institution uses the branch to evade stricter rules and regulations in force in the Republic of Croatia.

(3) A credit institution having its registered office in the Republic of Croatia that provides services in another Member State through a branch may apply for removal of a branch from the register of companies or other relevant register kept in the host country only upon settlement of all obligations arising from the operation of the branch.

## **Direct provision of services in another Member State**

### **Article 78**

(1) A credit institution having its registered office in the Republic of Croatia that intends to directly provide mutually recognised services within the territory of another Member State shall notify the Croatian National Bank in advance and state the Member State in which it intends to provide services directly.

(2) A credit institution having its registered office in the Republic of Croatia that is a parent undertaking of a financial institution meeting the requirements referred to in Article 82, paragraph (1) of this Act and that intends to directly provide mutually recognised services within the territory of another Member State shall notify the Croatian National Bank in advance and state the Member State in which the financial institution intends to provide services directly.

(3) Along with the notification referred to in paragraphs (1) and (2) of this Article, the credit institution shall enclose a list of services it intends to provide in the Member State and a business plan for the first three years of business.

(4) Within one month of receipt of the notification referred to in paragraphs (1) and (2) of this Article, the Croatian National Bank shall deliver that notification to the competent authority of the host Member State and notify the credit institution thereof.

(5) A credit or financial institution may begin to directly provide the mutually recognised services listed in the notification referred to in paragraphs (1) and (2) of this Article from the date of receipt of the notification from the Croatian National Bank that the notification referred to in the preceding paragraph has been delivered to the competent authority of the Member State.

### **III.3.2 Provision of banking and/or financial services in a third country**

#### **Provision of services in a third country**

##### **Article 79**

(1) A credit institution having its registered office in the Republic of Croatia may provide banking and/or financial services in a third country only through a branch.

(2) Before establishing a branch in a third country, a credit institution shall obtain authorisation from the Croatian National Bank (hereinafter: authorisation to establish a branch in a third country).

(3) A credit institution having its registered office in the Republic of Croatia that intends to establish a branch in a third country shall submit an application for authorisation to the Croatian National Bank, stating the country where it intends to open the branch, and shall enclose with the application:

1) a business plan for the first three years of business, setting out the types and the scale of services it intends to provide through the branch and the organisational structure of the branch;

2) the address in the host country from which the Croatian National Bank may obtain documentation on the branch; and

3) the names and addresses of natural persons who will be responsible for directing the business of the branch.

(4) The Croatian National Bank may request additional documentation within one month of receipt of the application referred to in paragraph (3) of this Article. If the Croatian National Bank requests additional documentation, the date of receipt of the complete application shall be deemed the delivery date.

(5) The Croatian National Bank shall decide on the application of the credit institution for the establishment of a branch within three months of the delivery date of the complete application.

(6) The Croatian National Bank shall refuse the application if, on the basis of the information available to it, it assesses that:

- 1) the credit institution intending to establish a branch does not have the appropriate organisational, technical and personnel structure or the adequate financial position to provide the planned scale of services in a third country;
- 2) in view of the regulations of that country or practices relating to their implementation, it is likely that the exercise of supervision in accordance with the provisions of this Act shall be prevented or made difficult; or
- 3) the credit institution thus attempts to evade stricter rules in force in the Republic of Croatia.

(7) Where a credit institution that has been authorised by the Croatian National Bank to establish a branch in a third country intends to establish any further branches, it shall notify the Croatian National Bank. The provisions of paragraphs (1) to (6) of this Article shall not apply in such cases.

(8) Where a credit institution that has been authorised to establish a branch in a third country intends to change any of the data referred to in paragraph (3) of this Article, it shall, at least one month before effecting the change, notify the Croatian National Bank thereof.

(9) The Croatian National Bank shall withdraw authorisation to establish a branch in a third country granted to a credit institution having its registered office in the Republic of Croatia:

- 1) where the competent authority of the host country has prohibited the credit institution from providing services within its territory;
- 2) where the branch does not commence its activities within six months of receiving authorisation;
- 3) where the branch does not engage in activities covered by the authorisation for more than six months;
- 4) where the branch ceases to comply with the requirements pursuant to which it was granted authorisation; or
- 5) where the credit institution obtained authorisation to establish a branch on the basis of false or inaccurate data, which were relevant for obtaining authorisation to establish a branch.

10) The Croatian National Bank may withdraw authorisation to establish a branch in a third country granted to a credit institution having its registered office in the Republic of Croatia:

- 1) where the credit institution no longer meets the organisational, technical and personnel requirements relating to the services it provides;

- 2) where the credit institution fails to meet the requirements relating to insurance of deposits with the branch;
- 3) where the credit institution does not comply with the regulations of the third country in the operation of the branch; or
- 4) where the geographical distribution of the provision of services indicates that the credit institution uses the branch to evade stricter rules and regulations in force in the Republic of Croatia.

(11) A credit institution having its registered office in the Republic of Croatia that provides services in a third country, may apply for removal of a branch from the register of companies or other relevant register kept in that country only upon settlement of all obligations arising from the operation of the branch.

### **III.3.3 Establishment of representative offices outside the Republic of Croatia**

#### **Establishment of representative offices outside the Republic of Croatia Article 80**

A credit institution having its registered office in the Republic of Croatia that intends to establish a representative office outside the Republic of Croatia shall notify the Croatian National Bank thereof and state the country in which it intends to establish a representative office.

### **III.4 PROVISION OF MUTUALLY RECOGNISED SERVICES BY CREDIT INSTITUTIONS WITH REGISTERED OFFICES OUTSIDE THE REPUBLIC OF CROATIA WITHIN THE TERRITORY OF THE REPUBLIC OF CROATIA**

#### **III.4.1 Right of establishment and freedom to provide mutually recognised services by credit institutions of the Member States**

##### **Provision of services by credit institutions of other Member States Article 81**

(1) A credit institution of another Member State may establish a branch in the Republic of Croatia and provide mutually recognised services that it is authorised to provide in the home Member State through that branch under the conditions laid down in this Act.

(2) A credit institution of a Member State may on a temporary basis directly provide mutually recognised services that it is authorised to provide in the home Member State within the territory of the Republic of Croatia under the conditions laid down in this Act.

##### **Provision of mutually recognised financial services by financial institutions of the Member States Article 82**

(1) A financial institution of another Member State may provide those mutually recognised services referred to in Article 6, paragraph (1), item (2) of this Act that it is authorised to provide in the home Member State, through a branch or on a temporary basis and directly within the territory of the Republic of Croatia provided that the following conditions are met:

- 1) its parent undertaking is one or more credit institutions with registered offices in a Member State that have been authorised by the competent authority;
- 2) it provides recognised financial services in the home Member State pursuant to its Articles of Association or another legal act;
- 3) its parent credit institutions hold 90 percent or more of the voting rights in that financial institution;
- 4) its parent credit institutions have satisfied the competent authorities of the home Member State regarding the prudent management of the institution and, with the consent of the relevant supervisory authorities, jointly guarantee the commitments entered into by the financial institution; and
- 5) the financial institution is included in the consolidated supervision of the parent undertaking, in particular for the purposes of calculating minimum own funds requirements, large exposures and qualifying holdings.

(2) By way of derogation from paragraph (1) of this Article, a financial institution of another Member State shall not issue electronic money within the territory of the Republic of Croatia.

(3) The provisions of this Title shall apply *mutatis mutandis* to subsidiaries of financial institutions meeting the conditions referred to in paragraph (1) of this Article.

### **Providing services through a branch in the Republic of Croatia** **Article 83**

(1) A credit institution of another Member State or the financial institution referred to in Article 82 of this Act that intends to establish a branch within the territory of the Republic of Croatia may submit an application to enter a branch in the register of companies and begin to provide services:

- 1) on receipt of the notification from the Croatian National Bank on the conditions which, in the interest of the general good, must be met when providing services within the territory of the Republic of Croatia; or
- 2) without receipt of such notification, following the expiry of a period of two months of receipt by the Croatian National Bank of the notification and enclosed data referred to in Articles 73 or 74 of this Act from the competent authority of the home Member State.

(2) If the credit institution or the financial institution referred to in paragraph (1) of this Article intends to subsequently change any of the data referred to in Articles 73 or 74 of this Act delivered to the competent authority of the home Member State, it shall notify the Croatian National Bank in writing at least one month before effecting the change.

(3) The provisions of Articles 73 and 74 of this Act shall apply *mutatis mutandis* to credit or financial institutions referred to in paragraph (1) of this Article.

(4) If a competent authority of the home Member State notifies the Croatian National Bank that the financial institution does not meet any of the conditions referred to in Article 82, paragraph (1) of this Act, the regulations governing the operation of financial institutions in the Republic of Croatia shall apply to the operation of the financial institution. In this case, the Croatian National Bank shall forward the notification in question to the supervisory authority in the Republic of Croatia.

### **Insurance of deposits with branches of credit institutions of other Member States**

#### **Article 84**

(1) Credit institutions of other Member States shall be required to insure deposits with their branches operating within the territory of the Republic of Croatia in their home Member States.

(2) If the level and scope of deposit insurance in the home Member State are lower than that offered by the deposit insurance scheme in the Republic of Croatia, branches of credit institutions of other Member States may join as appropriate the deposit insurance scheme in the Republic of Croatia.

### **Direct provision of services in the Republic of Croatia**

#### **Article 85**

(1) A credit institution of another Member State or the financial institution referred to in Article 82 of this Act may begin to directly provide mutually recognised services within the territory of the Republic of Croatia on the date of receipt by the Croatian National Bank of the notification from the competent authority of that Member State, including a list of services it intends to provide within the territory of the Republic of Croatia.

(2) The credit or financial institution referred to in paragraph (1) of this Article shall notify the Croatian National Bank of any intended change relating to the data from the notification referred to in the preceding paragraph at least one month before effecting the change.

### **Application of other provisions of this Act and other regulations to credit institutions of other Member States**

#### **Article 86**

(1) The following shall apply *mutatis mutandis* to credit institutions of other Member States providing mutually recognised services directly within the territory of the Republic of Croatia:

1) provisions of this Act relating to banking secrecy (Articles 168 and 169);

- 2) provisions of this Act and regulations adopted under this Act relating to consumer protection (Articles 304 to 310);
- 3) regulations in the Republic of Croatia governing the prevention of money laundering and terrorist financing;
- 4) other regulations which, in the interest of the general good, apply within the territory of the Republic of Croatia; and
- 5) regulations in the Republic of Croatia governing monetary policy.

(2) In addition to the provisions referred to in the preceding paragraph, the following shall apply *mutatis mutandis* to credit institutions of other Member States providing mutually recognised services within the territory of the Republic of Croatia through branches:

- 1) provisions of this Act and regulations adopted under this Act relating to reports and information required for performing activities within the competence of the Croatian National Bank in the field of monitoring liquidity risk (Article 121 and Article 161, paragraph (1), item (3), indent (5));
- 2) regulations adopted by the Croatian National Bank for the purposes of monetary statistics;
- 3) regulations relating to the scope of data to be published by branches of credit institutions of the Member States;
- 4) provisions of Article 175, paragraphs (5) and (6) of this Act on audited annual financial statements; and
- 5) provisions of Articles 219 and 220 of this Act and regulations adopted under Article 219 of this Act on annual supervision fees.

(3) The Croatian National Bank may prescribe in detail the manner of application of the provisions of paragraphs (1) and (2) of this Article.

### **III.4.2 Branches of third-country credit institutions**

#### **Provision of services through branches of third-country credit institutions**

##### **Article 87**

(1) A third-country credit institution (founder) may provide banking and/or financial services within the territory of the Republic of Croatia only through a branch, provided it is authorised to provide such services in the third country and has been operating for at least two years.

(2) A third-country credit institution (founder) intending to establish a branch within the territory of the Republic of Croatia shall obtain authorisation from the Croatian National Bank (hereinafter: authorisation to establish a branch of a third-country credit institution).

(3) The authorisation referred to in paragraph (2) of this Article shall contain a list of services that branches of third-country credit institutions may provide within the territory of the Republic of Croatia.

(4) Branches of third-country credit institutions may be entered in the register of companies after obtaining authorisation from the Croatian National Bank.

(5) A third-country credit institution (founder) may establish only one branch within the territory of the Republic of Croatia. If a third-country credit institution wishes to operate in more than one location within the territory of the Republic of Croatia, it may open one or more organisational units.

### **Establishment of branches of third-country credit institutions**

#### **Article 88**

(1) Applicants for authorisation to establish a branch of a third-country credit institution in the Republic of Croatia shall enclose with their application:

- 1) a certificate from the register of companies or other relevant register in the country where the third-country credit institution (founder) has its registered office, not older than three months, indicating its legal form, date of the entry in the register, persons authorised to represent it and the scope of their powers or, if the credit institution is established in a country that does not keep such a register, legally valid documents on establishment certified in accordance with the regulations of the country where the credit institution has its registered office, indicating its legal form, date of establishment, persons authorised to represent it and the scope of their powers;
- 2) the decision of the third-country credit institution (founder) to establish a branch;
- 3) a copy of the deed of establishment, memorandum or Articles of Association of the third-country credit institution (founder), certified in accordance with the regulations of the country where the credit institution has its registered office;
- 4) data on the members of management and supervisory bodies of the third-country credit institution (founder);
- 5) an application for prior approval for persons who will be responsible for directing the business of the branch of the third-country credit institution;
- 6) audit reports of the third-country credit institution (founder) for the three preceding years of business;
- 7) a credible document indicating the owners of the institution and their rights in managing the third-country credit institution (founder);
- 8) a certificate from the register of companies or other relevant register in the country where legal persons who are holders of qualifying holdings in the third-country credit institution (founder) have their registered offices, including a list of natural persons who are the ultimate shareholders of these legal persons;
- 9) authorisation to provide banking and financial services granted to the third-country credit institution (founder) by the competent authority;

- 10) a list of banking and financial services the branch of the third-country credit institution intends to provide in the Republic of Croatia and a business plan for the first three years of business;
- 11) a relevant legal act of the competent authority in the Republic of Croatia where so required by the regulations governing the provision of financial services envisaged in the business plan referred to in item (10) of this paragraph;
- 12) a list of persons connected with the third-country credit institution (founder) in the manner referred to in Article 24 of this Act;
- 13) authorisation by the competent authority of the third-country credit institution (founder) to establish the branch or a statement by the authority in question that such authorisation is not required under the regulations of the country where the credit institution has its registered office, not older than six months;
- 14) a statement by the third-country credit institution (founder) that the branch will keep all documentation relating to its business in the Croatian language and store it at the headquarters of the branch and will prepare financial statements in accordance with this Act or regulations adopted under this Act; and
- 15) information on the deposit insurance scheme of which the third-country credit institution (founder) is a member.

(2) The Croatian National Bank may request additional information and documentation within one month of receipt of the application referred to in paragraph (1) of this Article. If the Croatian National Bank requests additional information or documentation, the date of receipt of the complete application shall be deemed the delivery date.

(3) The provisions of Articles 43 to 47 and 51 of this Act shall apply *mutatis mutandis* to the procedure for granting and withdrawal of prior approval for persons who will be responsible for directing the business of a branch of a third-country credit institution.

(4) The Croatian National Bank shall refuse an application to establish a branch of a third-country credit institution if:

- 1) based on the data available to it and the documentation enclosed with the application, it assesses that the third-country credit institution (founder) does not have the adequate financial position or the appropriate organisational, technical and personnel structure to operate in accordance with the provisions of this Act through a branch it intends to establish;
- 2) the third-country credit institution (founder) has not been entered in the register of companies or other relevant register in the country where it has its registered office for at least two years;
- 3) in view of the regulations of the country where the third-country credit institution (founder) has its registered office or practices relating to their implementation, it is likely that the exercise of supervision in accordance with the provisions of this Act shall be made difficult or prevented;
- 4) it assesses that the person responsible for directing the business of the branch of the third-country credit institution does not meet the criteria laid down for members of the

credit institution's management board prescribed in Article 45, paragraphs (1) and (6) of this Act;

5) the third country in which the credit institution has its registered office has no regulations preventing money laundering and/or if these regulations do not provide for effective supervision of the prevention of money laundering and if the third-country credit institution (founder) or persons referred to in paragraph (1), item (8) of this Article are, in any way whatsoever, connected with terrorist financing or there are indications of it;

6) the Croatian National Bank has not concluded a cooperation agreement regarding supervision with the competent authority of the third country in which the credit institution that is the founder of the branch has its registered office; or

7) credit institutions with registered offices in the Republic of Croatia are not provided at least the same conditions for establishment of a branch in the country where the third-country credit institution (founder) has its registered office as are provided to the third-country credit institution (founder) in the Republic of Croatia.

(5) The Croatian National Bank shall grant authorisation to establish a branch of a third-country credit institution under the condition that the third-country credit institution places a deposit of not less than HRK 40 million in the account with a credit institution which has its registered office in the Republic of Croatia. The funds deposited shall be held in the account until the entry of the branch of the third-country credit institution (founder) in the register of companies, at which time they shall be transferred to the settlement account of the branch held with the Croatian National Bank. The funds shall be deemed to be own funds within the meaning of this Act.

(6) A third-country credit institution (founder) may increase the amount of own funds referred to in the preceding paragraph of this Article. The own funds increase may be effected only by payment in cash to the account of the branch held in the Republic of Croatia.

(7) Where a third-country credit institution (founder) intends to begin to provide other services that are not covered by the authorisation to establish a branch of the third-country credit institution within the territory of the Republic of Croatia, it shall apply to the Croatian National Bank for authorisation to provide such services.

(8) In connection with the authorisation referred to in paragraph (7) of this Article, the third-country credit institution (founder) shall deliver the documentation referred to in paragraph (1), items (9) and (10) and paragraph (2) of this Article. The provisions of paragraph (4) of this Article shall apply *mutatis mutandis*.

## **Dissolution of branches of third-country credit institutions**

### **Article 89**

(1) Authorisation to establish a branch of a third-country credit institution shall expire:

- 1) where the competent authority withdraws the third-country credit institution's (founder) authorisation, as of the date of withdrawal of authorisation;
- 2) where the third-country credit institution (founder) ceases to exist in the country where it has its registered office or under the regulations of that country loses its business capacity, or the competent court removes the third-country credit institution (founder) from the register of companies or other relevant register, or the right to dispose of its assets, as of the date when one of the reasons arises;
- 3) where the third-country credit institution (founder) adopted a decision on winding-up of the branch;
- 4) where the Croatian National Bank adopted a decision on the compulsory winding-up of the branch of the third-country credit institution; or
- 5) where a competent court adopted a decision to open bankruptcy proceedings against the branch of the third-country credit institution.

(2) The Croatian National Bank shall withdraw authorisation to establish a branch of a third-country credit institution (founder):

- 1) where conditions for refusal of the application for authorisation referred to in Article 88, paragraph (4), items (1), (3), (4) and (7) of this Act arise;
- 2) where the branch of the third-country credit institution fails to meet the requirements relating to deposit insurance laid down in the law governing deposit insurance;
- 3) where the branch of the third-country credit institution does not commence its activities within six months of the issue of authorisation;
- 4) where the branch of the third-country credit institution ceases to operate for more than six months;
- 5) where the third-country credit institution obtained authorisation to establish a branch on the basis of false and inaccurate data, which were relevant for obtaining authorisation to establish a branch;
- 6) where the branch of the third-country credit institution does not operate in accordance with the laws and regulations of the Republic of Croatia; or
- 7) where the branch of the third-country credit institution fails to meet its financial obligations in the Republic of Croatia.

(3) Where the competent authority of a third-country credit institution (founder) withdraws authorisation to provide a certain financial service, the credit institution shall notify the Croatian National Bank thereof. The Croatian National Bank shall withdraw authorisation of a branch of a third-country credit institution to provide such service within the territory of the Republic of Croatia.

(4) The Croatian National Bank may order a branch of a third-country credit institution whose assets and contingent liabilities reported in its audited financial statements exceed 5 percent of total assets and contingent liabilities of all credit institutions in the Republic of Croatia to continue its operation in the Republic of Croatia as a credit institution.

(5) A third-country credit institution (founder) may apply for removal of a branch of the third-country credit institution from the register of companies only upon settlement of all obligations arising from the operation of the branch.

### **Application of other provisions of this Act** **Article 90**

(1) The provisions of this Act and regulations adopted under this Act relating to the following shall apply *mutatis mutandis* to branches of third-country credit institutions:

- 1) the credit institution's management board (Articles 43 to 51);
- 2) risk management (Articles 95 to 124 and Articles 128 to 161);
- 3) reporting to the Croatian National Bank (Articles 162 to 163);
- 4) outsourcing of business activities (Articles 164 to 166);
- 5) banking secrecy (Articles 168 and 169);
- 6) business books and financial statements (Articles 171 to 175);
- 7) public disclosure (Articles 176 to 179);
- 8) internal control systems and external audit (Articles 180 to 196);
- 9) supervision of credit institutions (Articles 197 to 208 and Articles 218, 219 and 220);
- 10) supervisory measures (Articles 229 to 240);
- 11) dissolution and reorganisation (Articles 254 to 257, Articles 271 and 280 and Articles 348 to 359);
- 12) consumer protection (Articles 304 to 310);
- 13) the decision-making procedures of the Croatian National Bank (Articles 320 to 330); and
- 14) violations (Articles 363 to 368).

(2) The Croatian National Bank shall prescribe in detail the provisions on the establishment, operation, reporting, and dissolution of branches of third-country credit institutions together with the manner of application of the provisions of paragraph (1) of this Article to branches of third-country credit institutions.

### **Insurance of deposits with branches of third-country credit institutions** **Article 91**

(1) A third-country credit institution (founder) shall be required to insure deposits with its branches operating within the territory of the Republic of Croatia in its home country.

(2) The scope and level of coverage for deposits with branches of third-country credit institutions shall not exceed the scope and level laid down in deposit insurance regulations in the Republic of Croatia.

(3) Where there is no deposit insurance scheme in the country where the credit institution has its registered office or if the scope and/or level of coverage for deposits

are lower than in the Republic of Croatia, a branch of a third-country credit institution shall join the deposit insurance scheme in the Republic of Croatia.

### **III.4.3 Representative offices of credit institutions of other Member States**

#### **Establishment of representative offices of credit institutions of other Member States**

##### **Article 92**

(1) A credit institution of a Member State intending to establish a representative office in the Republic of Croatia shall first notify the Croatian National Bank of its intention.

(2) The following shall be enclosed with the notification referred to in the preceding paragraph:

- 1) the authorisation issued by the competent authority of a credit institution from another Member State;
- 2) the decision of the credit institution from another Member State to establish a representative office;
- 3) data on the headquarters (address) of the representative office of a credit institution from another Member State;
- 4) evidence of payment of all administrative fees; and
- 5) a list of persons responsible for directing the business of the representative office of a credit institution from another Member State.

(3) The Croatian National Bank shall enter the representative office of a credit institution in the register of representative offices in the Republic of Croatia and notify the credit institution from another Member State thereof within one month of receipt of the complete notification. The representative office of a credit institution from another Member State may commence its activities on receipt of the notification from the Croatian National Bank.

(4) Where a representative office of a credit institution of another Member State acts contrary to the regulations of the Republic of Croatia, the Croatian National Bank shall notify the competent authority responsible for the supervision of the credit institution.

(5) The Croatian National Bank may prescribe establishment procedures and additional conditions to be met by representative offices of credit institutions of other Member States.

### **III.4.4 Representative offices of third-country credit institutions**

#### **Authorisation to establish a representative office of a third-country credit institution**

##### **Article 93**

(1) Before establishing a representative office in the Republic of Croatia, a third-country credit institution shall obtain authorisation from the Croatian National Bank

(hereinafter: authorisation to establish a representative office of a third-country credit institution).

(2) The following shall be enclosed with the application for authorisation referred to in paragraph (1) of this Article:

- 1) a certificate from the register of companies or other relevant register where the credit institution is entered, not older than three months, indicating its legal form, date of the entry in the register, persons authorised to represent it and the scope of their powers or, if the credit institution is established in a country that does not keep such a register, legally valid documents on establishment certified in accordance with the regulations of the country where the credit institution has its registered office, indicating its legal form, date of establishment, persons authorised to represent it and the scope of their powers;
- 2) a copy of the deed of establishment, memorandum or Articles of Association of the third-country credit institution, certified in accordance with the regulations of the country where the credit institution has its registered office;
- 3) audit report, including audited financial statements, of the third-country credit institution for the three preceding years of business;
- 4) the decision of the third-country credit institution to establish a representative office;
- 5) data on the headquarters (address) of the representative office and its business premises;
- 6) authorisation by the competent authority of the third-country credit institution to establish a representative office or a statement by the authority in question that such authorisation is not required;
- 7) a certified statement by the third-country credit institution that it will settle all liabilities arising in the Republic of Croatia as a result of the activities of the representative office;
- 8) evidence of payment of all administrative fees; and
- 9) a list of persons responsible for directing the business of the representative office.

(3) The Croatian National Bank shall refuse the application to establish a representative office of a third-country credit institution within three months of receipt of the complete application if it establishes that:

- 1) cooperation between the competent authority of the third-country credit institution and the Croatian National Bank is not possible; and
- 2) there is reasonable doubt that the third-country credit institution is, in any way whatsoever, connected with terrorist financing, money laundering, and the like.

(4) The Croatian National Bank shall, simultaneously with issuing authorisation to establish a representative office a third-country credit institution, enter the representative office in the register of representative offices of credit institutions in the Republic of Croatia.

(5) Where a representative office of a third-country credit institution acts contrary to the regulations of the Republic of Croatia, the Croatian National Bank shall withdraw authorisation to establish a representative office of a third-country credit institution.

(6) The Croatian National Bank may prescribe in detail the conditions for the establishment and operation of representative offices of third-country credit institutions.

**Register of representative offices of credit institutions in the Republic of Croatia**  
**Article 94**

(1) The Croatian National Bank shall keep the register of representative offices of credit institutions in the Republic of Croatia.

(2) The Croatian National Bank may prescribe the manner in which the register of representative offices of credit institutions is to be kept and the manner in which data from the register is to be published.

**IV RISK MANAGEMENT**

**IV.1 DEFINITIONS**

**Risk management**  
**Article 95**

For the purposes of this Act, 'risk management' means a set of procedures and methods to identify, measure, evaluate, contain and monitor risks, including reporting on the risks to which the credit institution is or might be exposed in its operation.

**Credit risk**  
**Article 96**

For the purposes of this Act, 'credit risk' means the risk of loss arising from a borrower's failure to meet its financial obligations to a credit institution.

**Securitisation and related terms**  
**Article 97**

(1) For the purposes of this Act, 'securitisation' means a transaction or a set of legal arrangements (schemes), resulting in the economic transfer of an exposure or pool of exposures or the transfer of the credit risk associated with these exposures in at least two tranches. The main characteristics of securitisation are:

- 1) payments in the transaction or scheme are dependent upon the performance of the underlying exposure or pool of exposures; and
- 2) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.

(2) For the purposes of this Act, 'traditional securitisation' means a securitisation where the tranching is achieved by:

- 1) the transfer of ownership of the securitised exposures from the originator to a securitisation special purpose entity which issues securities based on the transferred assets, which do not represent payment obligations of the originator; or
- 2) sub-participation.

(3) For the purposes of this Act, 'synthetic securitisation' means a securitisation where the tranching is achieved by the use of credit derivatives or guarantees, and the pool of exposures is not removed from the balance sheet of the originator credit institution.

(4) For the purposes of this Act, 'tranche' means a contractually established segment of the credit risk associated with an exposure or number of exposures, where a position in the segment entails a risk of credit loss different from a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments.

(5) For the purposes of this Act, 'securitisation position' means an exposure to a securitisation.

(6) For the purposes of this Act, 'originator' means either of the following:

- 1) a person that, either itself or through connected persons, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or
- 2) a person who purchases a third party's exposures onto its balance sheet and then securitises them.

(7) For the purposes of this Act, 'sponsor' means a credit institution other than an originator credit institution that establishes and manages an asset-backed commercial paper programme or other securitisation scheme that purchases exposures from third parties.

(8) For the purposes of this Act, 'credit enhancement' means a contractual arrangement whereby the credit quality of a position in a securitisation is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior tranches in the securitisation and other types of credit protection.

(9) For the purposes of this Act, 'securitisation special purpose entity' (hereinafter: SSPE) means an entity meeting the following conditions:

- 1) it is not a credit institution;
- 2) it is organised for carrying out a securitisation or securitisations;
- 3) its activities are limited to those appropriate to accomplishing the objective referred to in item (2) of this paragraph;
- 4) its organisational structure is intended to isolate the obligations of the SSPE from those of the originator credit institution; and

5) holders of securities issued by the SSPE have the right to pledge or exchange those securities without restriction.

### **Recognised exchange Article 98**

For the purposes of this Act, 'recognised exchange' means an exchange which is recognised as such by the Croatian National Bank and which meets the following conditions:

- 1) it functions regularly;
- 2) it has rules, issued or approved by the supervisory authority, defining the conditions for the operation of the exchange, the conditions of access to the exchange as well as the conditions that shall be satisfied by a contract before it can effectively be dealt on the exchange; and
- 3) it has a clearing mechanism whereby derivative financial instruments are subject to daily margin requirements which, in the opinion of the Croatian National Bank, provide appropriate protection.

(2) The Croatian National Bank may prescribe the procedure for recognising exchanges.

### **Market risks Article 99**

(1) For the purposes of this Act, market risks comprise:

- 1) position risk,
- 2) foreign-exchange risk, and
- 3) commodities risk.

(2) 'Position risk' means the risk of loss arising from a price change in financial instruments or, in the case of a derivative financial instrument, in underlying variables. Position risk shall be divided into specific and general risk.

(3) 'General position risk' means the risk of loss arising from a price change in a financial instrument due to changes in the level of interest rates or to a broad capital-market movement unrelated to any specific attributes of the individual financial instrument.

(4) 'Specific position risk' means the risk of loss arising from a price change in an individual financial instrument due to factors related to its issuer or, in the case of a derivative financial instrument, the issuer of the underlying instrument.

(5) 'Foreign-exchange risk' means the risk of loss arising from a change in currency exchange rates and/or the price of gold.

(6) 'Commodities risk' means the risk of loss arising from a price change in the commodity.

**Settlement and counterparty risk**  
**Article 100**

'Settlement and counterparty risk' means risks of loss arising from counterparties' failure to meet their liabilities.

**Trading book and non-trading book**  
**Article 101**

(1) The trading book of an institution shall consist of all positions in financial instruments and commodities held either with trading intent or in order to hedge other elements of the trading book, provided that such positions are either free of any restrictive covenants on their tradability or able to be hedged.

(2) The non-trading book of an institution shall consist of on- and off-balance sheet items of the credit institution other than the trading book positions within the meaning of paragraph (1) of this Article.

**Interest rate risk in the non-trading book**  
**Article 102**

'Interest rate risk in the non-trading book' means the risk of loss arising from potential changes in interest rates as they affect a credit institution's non-trading book items.

**Liquidity risk**  
**Article 103**

'Liquidity risk' means the risk of loss arising from a credit institution's existing or expected inability to meet its financial obligations as they become due.

**Operational risk**  
**Article 104**

'Operational risk' means the risk of loss resulting from:

- inadequate or failed internal processes,
  - people or systems, or
  - external events,
- including legal risk.

**Compliance risk**  
**Article 105**

'Compliance risk' means the risk of imposition of measures and fines and the risk of substantial financial loss or loss of reputation to be suffered by a credit institution due to failure to comply with regulations, standards, codes and internal bylaws.

**Concentration risk**  
**Article 106**

'Concentration risk' means each individual, direct or indirect, exposure to a single person or group of connected persons or a group of exposures linked by the same risk factors such as the same economic sector, geographic region, activity or commodity or the application of credit risk mitigation techniques which may lead to losses that could jeopardise the continued operation of a credit institution.

**Residual risk**  
**Article 107**

'Residual risk' means the risk of loss arising when recognised credit risk mitigation techniques used by a credit institution prove less effective than expected.

**Dilution risk**  
**Article 108**

'Dilution risk' means the risk of loss due to a reduction in the amount of purchased receivables as a result of cash or non-cash credits to the obligor, which arise from a legal relationship with the former creditor that is the basis for receivables which are the subject of the purchase.

**IV.2 GENERAL PROVISIONS ON RISK MANAGEMENT**

**Capital adequacy**  
**Article 109**

A credit institution shall at all times ensure an amount of capital that is proportionate to the nature, scale and complexity of services it provides as well as the risks it is or might be exposed to while providing such services.

**Own funds of credit institutions**  
**Article 110**

(1) In order to ensure safe and sound operations and to be able to meet obligations to their creditors, credit institutions shall maintain an adequate level of own funds.

(2) A credit institution's own funds shall consist of original own funds and additional own funds, and other forms of capital prescribed by the Croatian National Bank.

(3) A credit institution's own funds shall not fall below the amount of initial capital prescribed in Article 29 of this Act.

### **Strategies and procedures to assess the adequacy of internal capital**

#### **Article 111**

(1) Credit institutions shall have in place and implement sound, effective and complete strategies and procedures to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital.

(2) 'Internal capital' means the capital that credit institutions consider adequate to cover the type and level of the risks to which they are or might be exposed.

(3) Credit institutions shall regularly review the strategies and procedures referred to in paragraph (1) of this Article to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities they carry out.

### **Liquidity principle and solvency principle**

#### **Article 112**

A credit institution shall operate so as to be able to meet its due and payable financial obligations at all times (liquidity principle) as well as to meet all of its obligations on an ongoing basis (solvency principle).

### **Governance arrangements**

#### **Article 113**

A credit institution shall establish and implement effective and sound governance arrangements that are proportionate to the nature, scale and complexity of the services it provides including:

- 1) a clear organisational structure with well defined, transparent and consistent lines of responsibility and accountability within the credit institution;
- 2) effective overall risk management; and
- 3) adequate internal control systems, including sound administrative and accounting procedures.

### **Risk management strategies and policies**

#### **Article 114**

In order to consistently apply the strategies and policies referred to in Article 48, paragraph (3), item (2) of this Act, a credit institution shall establish and apply consistently over time adequate internal control systems, including sound administrative, accounting and other procedures, in particular for:

- 1) calculating and monitoring capital requirements in relation to these risks; and

2) identifying and monitoring large exposures and subsequent changes to them, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

#### **IV.2.1 Credit risk**

##### **Credit risk management policies and procedures**

###### **Article 115**

(1) Credit institutions shall establish appropriate credit risk management policies and procedures, and ensure their implementation.

(2) Credit institutions shall adopt decisions to grant credits on the basis of sound and well-defined criteria and shall define the decision-making procedure for approving, amending, renewing and re-financing credits.

(3) Before the conclusion of contracts which give rise to credit risk exposure, credit institutions shall evaluate borrowers' creditworthiness and the quality, marketability, availability and value of the collateral received.

(4) Credit institutions shall monitor borrowers' operations for the duration of the legal relationship which gives rise to an exposure as well as the quality, marketability, availability and value of the collateral received.

##### **Monitoring of credit risk-bearing portfolios**

###### **Article 116**

(1) Credit institutions shall establish and ensure the implementation of appropriate systems for administration and ongoing monitoring of credit-risk bearing portfolios and individual exposures, which include:

- 1) the management of credit risk-bearing portfolios and individual exposures and allocation of exposures into groups by recoverability, and
- 2) adequate value adjustments, impairment of on-balance sheet items and provisions for risk-bearing off-balance sheet items.

(2) Credit institutions shall ensure that the diversification of their credit-risk bearing portfolios is in line with their credit strategy and target markets.

##### **Securitisation risk management**

###### **Article 117**

Credit institutions shall establish sound policies and procedures for managing risks arising from securitisation transactions in relation to which the credit institutions are the originator, sponsor or other participant, and ensure their implementation. The

management of risks arising from securitisation shall reflect the economic substance of the transaction.

**Residual risk management**  
**Article 118**

Credit institutions shall manage residual risk in accordance with previously defined policies and procedures.

**IV.2.2 Market risks**

**Policies and procedures for managing market risks**  
**Article 119**

(1) Credit institutions shall establish sound policies and procedures for measuring and managing of all material sources and effects of market risks, and ensure their implementation.

(2) The policies and procedures referred to in paragraph (1) of this Article shall prescribe, at a minimum:

- 1) the inclusion and active management of positions in the trading book, and
- 2) a valuation system for trading book positions.

**IV.2.3 Interest rate risk in the non-trading book**

**Interest rate risk in the non-trading book**  
**Article 120**

(1) Credit institutions shall establish sound systems for the management of interest rate risk in the non-trading book, and ensure their implementation.

(2) Where the decline in the economic value of a credit institution, arising from changes in non-trading book positions which are a result of standard interest rate shock, exceeds 20 percent of the credit institution's own funds, the Croatian National Bank shall take appropriate supervisory measures.

**IV.2.4 Liquidity risk**

**Liquidity risk management policies and procedures**  
**Article 121**

To ensure effective liquidity risk management, credit institutions shall:

- 1) prescribe sound policies and procedures for ongoing liquidity risk management;
- 2) regularly review the accuracy and legitimacy of assumptions underpinning the liquidity risk management system;

- 3) establish systems for ongoing management of current and future cash inflows and outflows;
- 4) adopt sound contingency plans to deal with crisis situations, defining activities for dealing with liquidity crises; and
- 5) carry out regular analyses of alternative scenarios and review the assumptions underpinning these analyses.

#### **IV.2.5 Operational risk**

##### **Operational risk management policies and procedures**

###### **Article 122**

(1) Credit institutions shall establish and ensure the implementation of sound policies and procedures for managing operational risk, including low-frequency high-severity events.

(2) Credit institutions shall, for the purpose of operational risk management, define operational risk so as to articulate what constitutes operational risk for the credit institution. The definition must at a minimum cover the risks of loss referred to in Article 104 of this Act.

(3) Credit institutions shall adopt contingency plans (crisis plans) and business continuity plans ensuring their ability to operate on an ongoing basis and to limit losses in the event of severe business disruption or discontinuation.

#### **IV.2.6 Concentration risk**

##### **Concentration risk management policies and procedures**

###### **Article 123**

Credit institutions shall establish sound policies and procedures for managing concentration risk, and ensure their implementation.

#### **IV.2.7 Other risks**

##### **Management of other risks**

###### **Article 124**

Credit institutions shall establish and implement sound policies and procedures for managing strategic risk, reputation risk, country risk and other risks they are or might be exposed to in their operation.

#### **IV.2.8 Prohibition on profit distribution**

##### **Prohibition on profit distribution**

## **Article 125**

(1) A credit institution shall not make advance profit or dividend payments, pay out profits or dividends, nor make payments deriving from the participation of its management board, supervisory board or employees in the profits of the credit institution in the following cases:

- 1) where the credit institution's capital is below the minimum capital requirement or where the capital of the credit institution decreases due to the payment of profit so as to fall below the minimum capital requirement laid down in Article 110, paragraph (3) and Article 131 of this Act;
- 2) where the credit institution fails to settle its due obligations in a timely fashion or where payment of profit would render it unable to settle its due obligations;
- 3) where the Croatian National Bank orders the credit institution to eliminate weaknesses and deficiencies related to the misstatement of any on- and off-balance sheet items whose correct statement would affect the presentation of business results in the credit institution's profit and loss account; or
- 4) where the Croatian National Bank so orders in its decision in the light of the manner in which the credit institution manages the risks to which it is or might be exposed in its operation.

(2) The prohibitions referred to in the preceding paragraph shall apply:

- 1) in cases referred to in paragraph (1), item (1) of this Article, until the credit institution reaches the adequate capital level;
- 2) in cases referred to in paragraph (1), item (2) of this Article, until the credit institution eliminates liquidity disruptions;
- 3) in cases referred to in paragraph (1), item (3) of this Article, until the credit institution eliminates all weaknesses and deficiencies in the presentation of items, unless correct presentation gives rise to reasons for the prohibition referred to in paragraph (1), items (1) and (2) of this Article; and
- 4) in cases referred to in paragraph (1), item (4) of this Article, for the duration of the time limits or until the credit institution complies with the measures laid down in the decision.

### **IV.3 LEVEL OF APPLICATION OF PRUDENTIAL REQUIREMENTS**

#### **Compliance with requirements on an individual basis**

##### **Article 126**

(1) Credit institutions with registered offices in the Republic of Croatia shall comply with the following requirements on an individual basis:

- 1) governance arrangements referred to in Article 113 of this Act;
- 2) minimum capital requirements referred to in Articles 130 and 131 of this Act;
- 3) large exposure limits referred to in Articles 149 to 155 of this Act;
- 4) limits on holdings in tangible assets referred to in Article 157, paragraph (3) of this Act;

- 5) limits on holdings in non-financial institutions referred to in Article 157, paragraphs (1) and (2) of this Act;
- 6) strategies and procedures to assess the adequacy of internal capital referred to in Article 111 of this Act; and
- 7) preparation and delivery of financial statements and other reports for the purposes of the Croatian National Bank.

(2) The requirements referred to in paragraph (1), items (5) and (6) of this Article shall not apply to a credit institution in the Republic of Croatia which is:

- 1) a subsidiary credit institution whose parent undertaking is required to comply with the provisions referred to in paragraph (1) of this Article on a consolidated basis; or
- 2) a parent credit institution which complies with the requirements referred to in Article 127, paragraph (1) of this Act.

(3) The requirements referred to in paragraph (1), items (5) and (6) of this Article shall also apply to credit institutions not included in a group of credit institutions in the RC pursuant to Article 282, paragraph (7) of this Act.

(4) A credit institution which has its registered office in the Republic of Croatia shall comply with the provisions on public disclosure referred to in Articles 176 to 178 of this Act on an individual basis where it is not:

- 1) a subsidiary credit institution of a parent undertaking subject to public disclosure requirements on a consolidated basis pursuant to Articles 176 to 178 of this Act;
- 2) a parent credit institution; and
- 3) included in a group of credit institutions in the RC pursuant to Article 282, paragraph (7) of this Act.

### **Compliance with requirements on a consolidated basis**

#### **Article 127**

(1) A parent credit institution in the Republic of Croatia shall comply with the following requirements on a consolidated basis for its group of credit institutions in the RC:

- 1) minimum capital requirements referred to in Articles 130 and 131 of this Act;
- 2) large exposure limits referred to in Articles 149 to 155 of this Act;
- 3) limits on holdings in tangible assets referred to in Article 157, paragraph (3) of this Act;
- 4) limits on holdings in non-financial institutions referred to in Article 157, paragraphs (1) and (2) of this Act;
- 5) strategies and procedures to assess the adequacy of internal capital referred to in Article 111 of this Act; and
- 6) preparation and delivery of financial statements and other reports for the purposes of the Croatian National Bank.

(2) A credit institution which has its registered office in the Republic of Croatia and is a subsidiary of a parent financial holding company pursuant to Article 282, paragraphs

(1), (3), (4) and (5) of this Act shall comply with the requirements referred to in paragraph (1) of this Article on a consolidated basis for its group of credit institutions in the RC. Where several credit institutions in the Republic of Croatia are subsidiaries of the same parent financial holding company, the requirements referred to in paragraph (1) of this Article shall relate to the credit institution with the largest balance sheet total.

(3) A credit institution which has its registered office in the Republic of Croatia and is an EU parent credit institution shall comply with the public disclosure requirements referred to in Articles 176 to 178 of this Act on a consolidated basis.

(4) A credit institution which has its registered office in the Republic of Croatia and is a subsidiary of an EU parent financial holding company pursuant to Article 282 of this Act shall comply with the public disclosure requirements referred to in Articles 176 to 178 of this Act on a consolidated basis. Where several credit institutions in the Republic of Croatia are subsidiaries of the same EU parent financial holding company, public disclosure requirements shall relate to the credit institution with the largest balance sheet total.

(5) By way of derogation from paragraphs (3) and (4) of this Article, the Croatian National Bank may require a subsidiary credit institution which is systemically important for the banking system of the Republic of Croatia to comply with the public disclosure requirements referred to in Article 176, paragraph (1), items (3) and (4) of this Act, in particular:

- 1) on a consolidated basis where in the Republic of Croatia it is an RC parent credit institution within its group of credit institutions; and
- 2) on an individual basis in other cases.

(6) In assessing the systemic importance of a credit institution for the banking system of the Republic of Croatia, the Croatian National Bank shall take into account its market share (overall and by individual business segment), the nature and scale of services it provides and its effect on the stability of the financial system of the Republic of Croatia.

(7) Where a subsidiary credit institution or a parent financial holding company in a group of credit institutions in the RC is a parent of or holds a participation in another credit or financial institution, an asset management company or a pension company with a registered office in a third country, it shall comply with the requirements referred to in paragraph (1) of this Article and Article 113 of this Act on a sub-consolidated basis.

(8) The parent credit institution in a group of credit institutions in the RC, the parent financial holding company referred to in Article 282 of this Act and their subsidiary undertakings in a group of credit institutions in the RC shall comply with the requirements on governance arrangements referred to in Article 113 of this Act on a group-wide basis of a group of credit institutions in the RC or sub-consolidated basis in order to ensure that the organisational structure, procedures and systems within the

group are consistent and well-integrated and enable the collection of any data and information relevant for the purposes of supervision.

(9) The Croatian National Bank may permit a credit institution, at its request, not to disclose in full or in part the information referred to in Articles 176 to 178 of this Act, provided that such information is disclosed on a consolidated basis by the credit institution's parent undertaking established in a third-country and where such disclosures are comparable to the disclosures under this Act.

## **V CAPITAL ADEQUACY**

### **V.1 GENERAL PROVISIONS ON CAPITAL ADEQUACY**

#### **Permissions of the Croatian National Bank Article 128**

(1) A credit institution or member of a group of credit institutions in the RC shall obtain permission from the Croatian National Bank for the use of:

- 1) the Internal Ratings Based Approach (hereinafter: the IRB Approach) for the calculation of risk-weighted exposure amounts for credit risk;
- 2) the Own Estimates of Volatility Adjustments Approach under the Financial Collateral Comprehensive Method and internal models to calculate the fully adjusted exposure value for standardised netting agreements within the framework of credit risk mitigation techniques;
- 3) particular methods of calculating risk-weighted exposure amounts for securitisation positions prescribed by the Croatian National Bank in subordinate legislation;
- 4) the Advanced Measurement Approach for the calculation of capital requirements for operational risk;
- 5) an internal model for the calculation of the capital requirement for counterparty risk;
- 6) internal models for the calculation of capital requirements for position risk, foreign-exchange risk, and/or commodities risk;
- 7) an internal model for the evaluation of options; and
- 8) sensitivity models for the calculation of positions in derivative financial instruments.

(2) A group of credit institutions in the RC shall apply for permissions referred to in paragraph (1) of this Article jointly as a group.

(3) The Croatian National Bank may allow, in cooperation with other competent authorities, the particular qualifying criteria and minimum requirements for the use of certain approaches and internal models to be met by the parent undertaking and subsidiary undertaking considered together, where the EU parent credit institution and its subsidiaries or subsidiaries of a credit institution's EU parent financial holding company calculate capital requirements for credit and operational risks by using the approaches referred to in paragraph (1), items (1) and (4) of this Article on a unified basis.

(4) A credit institution shall immediately notify the Croatian National Bank where it plans to change an internal model referred to in paragraph (1) of this Article for which it was granted permission by the Croatian National Bank.

(5) In the case referred to in paragraph (4) of this Article, the Croatian National Bank shall assess whether the planned change requires amendments to the permissions referred to in paragraph (1) of this Article on the basis of the documentation delivered and any other available information.

(6) A credit institution shall immediately notify the Croatian National Bank where it ceases to meet the requirements for obtaining the permissions referred to in paragraph (1) of this Article. The credit institution shall either enclose:

- 1) evidence that the effect of non-compliance is immaterial; or
- 2) a plan for ensuring compliance with the requirements referred to in paragraph (1) of this Article.

### **Definition of exposure**

#### **Article 129**

'Exposure of a credit institution to a single person' means the amount of all on- and off-balance sheet items related to that person.

### **Capital adequacy ratio**

#### **Article 130**

(1) The capital adequacy ratio shall amount to at least 12 percent (hereinafter: minimum capital adequacy ratio).

(2) The capital adequacy ratio shall be calculated in the manner prescribed by the Croatian National Bank in subordinate legislation.

(3) Exceptionally, the Croatian National Bank may prescribe an even higher minimum capital adequacy ratio than the capital adequacy ratio referred to in paragraph (1) of this Article for credit institutions which take on especially high levels of risk.

### **Minimum level of own funds**

#### **Article 131**

(1) A credit institution's own funds shall at all times be higher than or equal to the sum of the following capital requirements:

- 1) for credit risk (including securitisation risk and dilution risk) – capital requirements for its non-trading book business, in the amount not less than 12 percent of the total of risk-weighted exposure amounts for credit risk;

- 2) for counterparty risk – capital requirements for all of credit institution's business activities, in the amount not less than 12 percent of the total of risk-weighted exposure amounts for credit risk;
- 3) for position risk and settlement risk – capital requirements for its trading book business, in accordance with the methodology prescribed by the Croatian National Bank in subordinate legislation;
- 4) for exceeding the permitted exposure limits – capital requirements for trading book positions giving rise to the excess, in accordance with the methodology prescribed by the Croatian National Bank in subordinate legislation;
- 5) for foreign-exchange risk and commodities risk – capital requirements for all of credit institution's business activities, in accordance with the methodology prescribed by the Croatian National Bank in subordinate legislation; and
- 6) for operational risk – capital requirements for all of credit institution's business activities, in accordance with the methodology prescribed by the Croatian National Bank in subordinate legislation.

(2) Exceptionally, the Croatian National Bank may prescribe an even higher minimum level of own funds than the level of own funds referred to in paragraph (1) of this Article for credit institutions which take on especially high levels of risk.

## **V.2 CAPITAL REQUIREMENTS FOR CREDIT RISK**

### **Risk-weighted exposure amounts for credit risk**

#### **Article 132**

(1) Credit institutions shall use the Standardised Approach for the calculation of risk-weighted exposure amounts for credit risk.

(2) Exceptionally, subject to the permission of the Croatian National Bank, credit institutions shall calculate risk-weighted exposure amounts for credit risk and expected loss amounts using the IRB Approach in the manner and scope referred to in Articles 128 and 135 of this Act.

### **Standardised Approach to credit risk**

#### **Article 133**

To calculate risk-weighted exposure amounts for credit risk under the Standardised Approach, a credit institution shall apply risk weights to all exposures, depending on:

- 1) the exposure class to which the exposure is assigned; and
- 2) the credit quality step if the exposure is assigned to an exposure class for which a credit quality step is calculated.

### **Recognition of External Credit Assessment Institutions**

#### **Article 134**

(1) To determine the credit quality step assigned to an exposure, a credit institution may use credit assessments by External Credit Assessment Institutions previously recognised as eligible by the Croatian National Bank for this purpose or credit assessments by Export Credit Agencies under the conditions prescribed by the Croatian National Bank.

(2) The Croatian National Bank shall recognise an External Credit Assessment Institution as eligible for the purposes of paragraph (1) of this Article only where the assessment methodology of the External Credit Assessment Institution complies with the prescribed requirements relating to objectivity, independence, ongoing review and transparency as key elements in the assessment of the credibility and transparency of its credit assessments.

(3) To have its ratings used to calculate risk-weighted exposure amounts for securitisation positions, an External Credit Assessment Institution shall, in addition to the requirements referred to in paragraph (2) of this Article, demonstrate its ability in the area of securitisation.

(4) The Croatian National Bank shall recognise an External Credit Assessment Institution as eligible for one or all market segments as well as for the assignment of credit assessments provided the External Credit Assessment Institution meets the requirements prescribed by the Croatian National Bank.

(5) The Croatian National Bank shall publish a list of eligible External Credit Assessment Institutions as well as credit assessments assigned to respective credit quality steps by individual market segments.

(6) The Croatian National Bank may recognise an External Credit Assessment Institution as eligible within the meaning of paragraphs (1) and (3) of this Article by carrying out its own evaluation process or where the External Credit Assessment Institution has been recognised by the competent authorities of the Member States.

### **Internal Ratings Based Approach**

#### **Article 135**

(1) A credit institution which has obtained the permission referred to in Article 128, paragraph (1), item (1) of this Act, including parent and subsidiary undertakings in a group of credit institutions, shall implement the IRB Approach for all exposures within the scope determined by the permission.

(2) The scope of implementation of the IRB Approach encompasses:

- 1) the Foundation IRB Approach,
- 2) the Advanced IRB Approach, and
- 3) permanent exemptions referred to in paragraph (6) of this Article.

(3) A credit institution may alter the scope of implementation of the IRB Approach only for demonstrated good cause and subject to the prior permission of the Croatian National Bank.

(4) Within the framework of the permission referred to in Article 128, paragraph (1), item (1) of this Act, the Croatian National Bank may permit a credit institution to implement the IRB Approach sequentially.

(5) The credit institution referred to in paragraph (1) of this Article shall carry out and document validation procedures for the IRB Approach on an annual basis at a minimum.

(6) A credit institution using the IRB Approach may, subject to the permission of the Croatian National Bank, calculate risk-weighted exposure amounts using the Standardised Approach for the exposure classes laid down by the Croatian National Bank in subordinate legislation.

(7) A credit institution using the IRB Approach may move to the use of the Standardised Approach only for demonstrated good cause and subject to the prior permission of the Croatian National Bank.

### **Credit risk mitigation techniques**

#### **Article 136**

(1) 'Credit risk mitigation techniques' means the techniques of using prescribed eligible credit protection to reduce the credit risk associated with an exposure or exposures of a credit institution.

(2) When calculating risk-weighted exposure amounts for credit risk or expected loss amounts relating to an exposure, a credit institution may use credit protection where credit protection is eligible for credit risk mitigation purposes and complies with the minimum requirements ensuring its realisation.

(3) When calculating the effects of credit risk mitigation, a credit institution may use the Financial Collateral Simple Method or the Financial Collateral Comprehensive Method. Credit institutions using the Financial Collateral Comprehensive Method may, when calculating the effects of credit risk mitigation, use own estimates of volatility adjustments, subject to the prior permission of the Croatian National Bank. Credit institutions may use internal models to calculate the fully-adjusted exposure value for the exposures subject to a master netting agreement, subject to the prior permission of the Croatian National Bank.

### **Capital requirement for settlement and counterparty risk**

#### **Article 137**

(1) When calculating the capital requirement for settlement risk, credit institutions shall use the methodology and corresponding risk factors and weights prescribed by the Croatian National Bank in subordinate legislation.

(2) When calculating the capital requirement for counterparty risk, credit institutions shall use the methods and risk weights prescribed by the Croatian National Bank in subordinate legislation.

(3) By way of derogation from paragraph (2) of this Article, a credit institution may use an internal model for the calculation of the capital requirement for counterparty risk, subject to the prior permission of the Croatian National Bank.

### **V.3 CAPITAL REQUIREMENTS FOR MARKET RISKS**

#### **Capital requirement for position risk**

##### **Article 138**

(1) Capital requirement for position risk shall be equal to the sum of capital requirements for general position risk and capital requirements for specific position risk. Capital requirements for general or specific position risk shall be calculated based on the net position in each financial instrument in the trading book.

(2) When calculating the capital requirement for general position risk of debt instruments, credit institutions shall use a Maturity-based Approach or a Duration-based Approach.

(3) When calculating the capital requirement for general and specific position risk of debt and equity instruments, credit institutions shall use the methodology and the corresponding risk weights prescribed by the Croatian National Bank in subordinate legislation.

(4) By way of derogation from paragraph (3) of this Article, a credit institution may use an internal model for the calculation of the capital requirement for position risk, subject to the prior permission of the Croatian National Bank.

#### **Capital requirement for foreign-exchange risk**

##### **Article 139**

(1) A credit institution shall calculate its overall open foreign-exchange position on the basis of open foreign-exchange positions in each currency and in gold. It shall use the calculation methodology prescribed by the Croatian National Bank in subordinate legislation for the calculation of open foreign-exchange positions.

(2) A credit institution shall calculate the capital requirement for foreign-exchange risk where its overall open foreign-exchange position (including its position in gold) exceeds 2 percent of its own funds.

(3) By way of derogation from paragraph (1) of this Article, a credit institution may use an internal model for the calculation of the capital requirement for foreign-exchange risk, subject to the prior permission of the Croatian National Bank.

### **Capital requirement for commodities risk**

#### **Article 140**

(1) The capital requirement for commodities risk shall be calculated on the basis of positions in each type of commodity.

(2) When calculating the capital requirement for commodities risk, a credit institution shall use the Simplified Approach or the Maturity Ladder Approach in accordance with the methodology prescribed by the Croatian National Bank in subordinate legislation.

(3) By way of derogation from paragraph (2) of this Article, a credit institution may use an internal model for the calculation of the capital requirement for commodities risk, subject to the prior permission of the Croatian National Bank.

## **V.4 CAPITAL REQUIREMENT FOR EXCEEDING THE PERMITTED EXPOSURE LIMITS**

### **Capital requirement for exceeding the permitted exposure limits**

#### **Article 141**

A credit institution shall calculate the capital requirement for exceeding the permitted exposure limits referred to in Articles 150 and 151 of this Act, where the excess arises exclusively and entirely from trading book positions.

## **V.5 CAPITAL REQUIREMENTS FOR OPERATIONAL RISK**

### **Approaches for the calculation of the capital requirement for operational risk**

#### **Article 142**

Credit institutions shall use the Basic Indicator Approach, the Standardised Approach or the Advanced Measurement Approach to calculate the capital requirement for operational risk.

### **Changing the approach for the calculation of the capital requirement for operational risk**

#### **Article 143**

(1) By way of derogation from Article 142 of this Act, a credit institution may use several approaches at the same time, subject to the prior permission of the Croatian National Bank.

(2) A credit institution using the Basic Indicator Approach may move to the use of the Standardised Approach or the Advanced Measurement Approach. A credit institution using the Standardised Approach may move to the use of the Advanced Measurement Approach.

(3) A credit institution using the Standardised Approach may move to the use of the Basic Indicator Approach only for demonstrated good cause and subject to the prior permission of the Croatian National Bank.

(4) A credit institution using the Advanced Measurement Approach may move to the use of the Basic Indicator Approach or the Standardised Approach only for demonstrated good cause and subject to the prior permission of the Croatian National Bank.

### **Relevant indicator**

#### **Article 144**

(1) The basis for the calculation of a relevant indicator shall be the sum of net interest income and net non-interest income.

(2) Exceptionally, where a credit institution did not operate during the entire period or part of the period for which it is to calculate a relevant indicator, or where data required to calculate a relevant indicator are not available due to other reasons, the credit institution may, subject to the prior permission of the Croatian National Bank, use business estimates to calculate a relevant indicator.

### **Basic Indicator Approach**

#### **Article 145**

The capital requirement for operational risk under the Basic Indicator Approach shall be a certain percentage of a relevant indicator.

### **Standardised Approach**

#### **Article 146**

(1) Under the Standardised Approach, credit institutions shall divide their activities into business lines. The calculation of the capital requirement for operational risk under the Standardized Approach shall be based on a certain percentage of a relevant indicator for each business line to be prescribed by the Croatian National Bank in subordinate legislation.

(2) Credit institutions using the Standardised Approach shall meet the qualifying criteria for the Standardised Approach.

### **Advanced Measurement Approach Article 147**

(1) Credit institutions may use the Advanced Measurement Approach based on their own operational risk measurement systems and internal models for the calculation of capital requirements, subject to the prior permission of the Croatian National Bank.

(2) Credit institutions using the Advanced Measurement Approach must meet the qualifying criteria for the Advanced Measurement Approach.

(3) Within the framework of the permission referred to in Article 128, paragraph (1), item (4) of this Act, the Croatian National Bank may permit a credit institution to implement the Advanced Measurement Approach sequentially.

### **Notification to the Croatian National Bank relating to operational risk Article 148**

(1) A credit institution using the Basic Indicator Approach for the calculation of the capital requirement for operational risk shall notify the Croatian National Bank of its intention to move to the use of the Standardised Approach for the calculation of the capital requirement for operational risk.

(2) A credit institution shall notify the Croatian National Bank without delay where it ceases to meet the requirements referred to in Articles 146 or 147 of this Act and of subordinate legislation relating to the requirements for combining different approaches, the use of the Standardised Approach, the use of the Advanced Measurement Approach and the procedures for calculating the capital requirement for operational risk under the Basic Indicator Approach and the Standardised Approach, and shall suggest measures and time limits for compliance with those requirements.

## **VI LARGE EXPOSURES**

### **Large exposures Article 149**

'Large exposure' means an exposure to a single person or group of connected persons where its value is equal to or exceeds 10 percent of a credit institution's own funds.

### **Maximum permitted exposure limits Article 150**

(1) A credit institution's exposure to a single person or group of connected persons may

not exceed 25 percent of its own funds.

(2) By way of derogation from the provisions of paragraph (1) of this Article, a credit institution's exposure to the single person referred to in Article 153 of this Act or a group of persons connected with it shall not exceed 10 percent of its own funds.

### **Total exposure limits**

#### **Article 151**

(1) The sum of all large exposures may not exceed 600 percent of a credit institution's own funds.

(2) The sum of all exposures to the persons referred to in Article 153 of this Act may not exceed 50 percent of a credit institution's own funds.

### **Exposures of a credit institution to the group**

#### **Article 152**

(1) The limits referred to in Article 150, paragraph (2) and Article 151, paragraph (2) of this Act shall not relate to a credit institution's exposure to its parent undertaking, its subsidiary undertakings and persons connected with them.

(2) The limits referred to in Article 150, paragraph (1) and Article 151, paragraph (1) of this Act shall apply to the total exposure referred to in paragraph (1) of this Article.

### **Persons in a special relationship with a credit institution**

#### **Article 153**

(1) Persons in a special relationship with a credit institution to whom an exposure would be incurred or increased are:

- 1) the credit institution's shareholders owning 5 percent or more of shares with voting rights at the credit institution's general meeting;
- 2) the members of the credit institution's management and supervisory board and its procurators;
- 3) persons who have concluded employment contracts with the credit institution under preferential terms; and
- 4) legal persons in which the credit institution holds a participation.

(2) Persons in a special relationship with the credit institution shall also be persons connected with such persons in the manner referred to in Article 24 of this Act.

### **Approval of the supervisory board**

#### **Article 154**

(1) Approval of the credit institution's supervisory board shall be required before concluding a legal arrangement that might result in a credit institution's large exposure to a single person or group of connected persons. Prior approval of the supervisory board shall also be required before concluding a legal arrangement as a result of which the credit institution's large exposure to a single person or group of connected persons would increase so as to reach or exceed 15 percent or 20 percent of the credit institution's own funds.

(2) Prior approval of the credit institution's supervisory board shall be required for any legal arrangement as a result of which the credit institution would incur exposure to or increase its exposure to the persons referred to in Article 153 of this Act.

(3) By way of derogation from paragraph (2) of this Article, prior approval of the credit institution's supervisory board shall not be required for any legal arrangement as a result of which the credit institution would incur exposure to or increase its exposure to the natural persons referred to in Article 153 of this Act, in so far as the legal arrangement is concluded pursuant to the conditions prescribed in the credit institution's general operating conditions.

### **Exceeding the maximum permitted exposure limits Article 155**

(1) Where a credit institution, as a result of circumstances beyond its control, exceeds the maximum permitted exposure limits referred to in Articles 150 to 152 of this Act on the basis of non-trading book items, it shall notify the Croatian National Bank without delay. The credit institution shall enclose with the notification a description of measures it will implement to ensure compliance of its operation with Articles 150 to 152 of this Act, including the time limit for their implementation.

(2) A credit institution may exceed the maximum permitted exposure limits referred to in Article 150 or 151 of this Act if the following conditions are met:

1) exposure to a single person or group of connected persons arising from the non-trading book items shall not exceed the limits referred to in Article 150 or 151 of this Act or the excess arises exclusively and entirely from trading book positions;

2) the credit institution covered the capital requirement for exceeding the permitted exposure limits with its own funds pursuant to Article 141 of this Act;

3) if not more than 10 days have lapsed from the day of the excess, the sum of the credit institution's exposures to a single person or group of connected persons arising from trading book positions shall not exceed 375 percent of the credit institution's own funds; and

4) if more than 10 days have lapsed from the day of the excess, the sum of the credit institution's exposures to a single person or group of connected persons exceeding the limits referred to in Articles 150 and 151 shall not exceed 450 percent of the credit institution's own funds.

## **VII HOLDINGS IN NON-FINANCIAL INSTITUTIONS AND TANGIBLE ASSETS**

### **Non-financial institution**

#### **Article 156**

For the purposes of Articles 157 to 160 of this Act, 'non-financial institutions' means all legal persons with the exception of:

- 1) credit or financial institutions,
- 2) ancillary services undertakings, and
- 3) insurance and reinsurance undertakings.

### **Limits on holdings in non-financial institutions and tangible assets**

#### **Article 157**

(1) A credit institution's holdings in the capital of a non-financial institution shall not exceed 15 percent of the credit institution's own funds.

(2) A credit institution's total holdings in the capital of non-financial institutions may not exceed 30 percent of the credit institution's own funds.

(3) A credit institution's total holdings in tangible assets may not exceed 40 percent of the credit institution's own funds.

### **Exemptions from limits on holdings**

#### **Article 158**

(1) Holdings that a credit institution acquired in exchange for its claims during the process of financial reconstruction or in the course of bankruptcy or foreclosure proceedings, or through the realisation of collateral received pursuant to the Foreclosure Act, shall not be subject to the limits laid down in Article 157 of this Act for the first two years after acquisition.

(2) The following shall also not be subject to the limits referred to in Article 157, paragraphs (1) and (2) of this Act:

- 1) shares and other equity securities held during the course of underwriting of financial instruments and placing of financial instruments on a firm commitment basis for a maximum period of 12 months;
- 2) shares, other equity securities or holdings acquired in a credit institution's own name on behalf of others; and
- 3) shares, other equity securities or holdings held in the trading book.

### **Permitted breaches of limits on holdings**

#### **Article 159**

(1) A credit institution may exceed the limits referred to in Article 157, paragraphs (1) and (2) of this Act, where the amount of a holding in excess of these limits is fully covered by own funds. Where the credit institution has simultaneously exceeded the limit referred to in Article 157, paragraph (1) and the limit referred to in Article 157, paragraph (2) of this Act, the greater amount shall be covered by own funds.

(2) The credit institution referred to in paragraph (1) of this Article shall deduct the excess amount in the calculation of own funds.

### **Croatian National Bank approval to acquire individual holdings** **Article 160**

(1) A credit institution shall obtain prior approval of the Croatian National Bank before concluding a legal arrangement that would result in the gradual or immediate acquisition of a holding of 20 percent or more in another legal person, if the holding exceeds 10 percent of the credit institution's own funds.

(2) A credit institution shall obtain prior approval of the Croatian National Bank before concluding a legal arrangement that would result in the acquisition of a majority holding in the capital or of a majority of the voting rights in another legal person.

(3) By way of derogation from paragraphs (1) and (2) of this Article, a credit institution shall not be required to obtain prior approval of the Croatian National Bank to conclude a legal arrangement that would result in the acquisition of shares or holdings it intends to hold in the trading book.

(4) A credit institution shall notify the Croatian National Bank of all changes in the activity of legal persons in which it has a majority holding in the capital or a majority of the voting rights prior to the entry of such activity in the register of companies. The credit institution shall notify the Croatian National Bank where a legal person in which it has a majority holding in the capital or a majority of the voting rights adopts a decision to establish another legal person, and on the activities of that legal person, within eight days of the adoption of the decision on establishment.

(5) The following documents shall be enclosed with the application for the prior approval referred to in paragraphs (1) and (2) of this Article:

- 1) a detailed description of the legal arrangement to which the application refers;
- 2) a description of actions already taken by the applicant in relation to the legal arrangement to which the application refers;
- 3) a description of the effect of acquiring a majority holding in the capital or a majority of the voting rights on the existing operations of the applicant; and
- 4) a business plan with projected financial statements for the following three years.

## **VIII RISK MANAGEMENT REGULATIONS**

## **Risk management regulations**

### **Article 161**

(1) The Croatian National Bank may prescribe in detail:

- 1) regarding the calculation of own funds on an individual and consolidated basis:
  - the characteristics and types of items to be included in the calculation of own funds;
  - the method and scope of inclusion of individual items in the calculation of individual components of own funds;
  - the method of and time limits for reporting to the Croatian National Bank;
- 2) procedures for assessment, the method of and time limits for reporting to the Croatian National Bank on the adequacy of a credit institution's internal capital and the calculation of internal capital on an individual and consolidated basis;
- 3) regarding risk management rules:
  - general risk management rules;
  - credit risk management rules;
  - market risks management rules,
  - standard interest rate shock, the method of calculating the credit institution's economic value, reporting to the Croatian National Bank and other procedures and principles to manage interest rate risk in the non-trading book;
  - the method of calculating liquidity positions and liquidity risk management rules,
  - operational risk management rules;
  - rules for the management of other risks;
- 4) regarding monitoring of credit risk-bearing portfolios:
  - criteria for allocation of exposures into groups by recoverability;
  - methods of determining value adjustments, impairment of on-balance sheet items and provisions for off-balance sheet items;
- 5) regarding the calculation of the capital requirement for credit risk:
  - types and characteristics of exposure classes;
  - exposure calculation methods;
  - rules for the calculation of risk-weighted exposure amounts for credit risk for individual types of exposures, and for calculating capital requirements for credit risk and expected loss amounts;
  - conditions and procedures for the recognition and monitoring of External Credit Assessment Institutions by the Croatian National Bank as well as the scope and method of disclosing the results of the recognition process;
  - conditions and rules for the use of the assessments by External Credit Assessment Institutions for credit institutions' calculation of risk-weighted exposure amounts for credit risk as well as the method of reporting to the Croatian National Bank and disclosure by External Credit Assessment Institutions;
  - conditions and rules for the use of the credit assessments of Export Credit Agencies;
  - criteria for the use of credit protection and the calculation of its effects;
  - minimum requirements for granting permissions to use the IRB Approach;
  - the scope and method of implementation of the IRB Approach;

- the method of and the conditions for sequential implementation of the IRB Approach and permanent exemptions;
  - rules on the inclusion of securitisation in the calculation of the capital requirement for credit risk;
  - the methodology, risk factors and weights for calculating capital requirements for settlement and counterparty risk;
  - the calculation of prudential requirements on a consolidated basis;
- 6) regarding the calculation of the capital requirement for market risk:
- features of the trading book;
  - the method of calculating exposures;
  - the methodology and risk weights for calculating the capital requirement for position risks;
  - the method of calculating the overall open foreign-exchange position and the method of calculating the capital requirement for foreign-exchange risk;
  - the methodology for the Simplified Approach or the Maturity Ladder Approach for the calculation of the capital requirement for commodities risk;
  - instructions on the methods and conditions for the use of individual methods for the calculation of capital requirements for market risks;
  - conditions for the use and instructions on the scope and method of using internal models for the calculation of capital requirements for market risks;
  - the calculation of prudential requirements on a consolidated basis;
- 7) regarding the calculation of the capital requirement for operational risk:
- the calculation of the capital requirement for operational risk, the conditions for and the method of combining approaches, the procedure for granting permissions to move from the Standardised Approach to the Basic Indicator Approach and the procedure for granting permissions to move from the Advanced Measurement Approach to the Basic Indicator Approach or the Standardised Approach;
  - individual elements, limits and exclusions relating to the calculation of a relevant indicator used for the calculation of the capital requirement for operational risk;
  - the method of and the parameters for calculating the capital requirement for operational risk under the Basic Indicator Approach;
  - business lines, the method of and the parameters for calculating the capital requirement for operational risk as well as qualifying criteria for the use of the Standardised Approach;
  - the method of and the parameters for calculating the capital requirement for operational risk under the Advanced Measurement Approach, qualifying criteria for the use of the Advanced Measurement Approach and the sequential implementation of the Advanced Measurement Approach;
  - conditions for recognising the impact of insurance and other risk transfer mechanisms as well as for granting permission to use the Advanced Measurement Approach for the calculation of the capital requirement for operational risk;
  - the calculation of prudential requirements on a consolidated basis;
- 8) regarding the calculation of large exposures:
- the method of calculating exposures;

- rules on procedures for calculating concentration risk including large exposures, exposures to persons in a special relationship with the credit institution and exposures to collateral providers;
- other exemptions from the limits referred to in Articles 150 and 151 of this Act;
- the methodology and appropriate factors for calculating the capital requirement for exceeding the permitted exposure limits;
- the calculation of prudential requirements on a consolidated basis;
- 9) regarding holdings in non-financial institutions and tangible assets:
  - the method of assessing and including individual holdings in the calculation of limits on holdings in non-financial institutions and tangible assets;
  - the method of calculating limits on holdings and procedures to be followed in case of exceeding such limits;
  - the method of and time limits for reporting to the Croatian National Bank on credit institutions' holdings in non-financial institutions and other legal persons, and holdings in tangible assets;
  - the calculation of prudential requirements on a consolidated basis;
  - the procedure for and the method of granting prior approvals;
- 10) provisions for litigation costs and legal risk; and
- 11) regarding reporting to the Croatian National Bank:
  - contents of reports and notifications;
  - time limits for and the method of reporting.

(2) The Croatian National Bank may prescribe the allocation of reserves for general banking risks, the method of calculating individual and all open positions and of the largest permitted difference between these positions, and limits determining special conditions for the operation of credit institutions.

## **IX REPORTING TO THE CROATIAN NATIONAL BANK**

### **Reporting Article 162**

(1) A credit institution shall report to the Croatian National Bank in accordance with this Act and regulations adopted under this Act.

(2) A credit institution shall report to the Croatian National Bank the following without delay:

- 1) all facts to be entered in the register of companies and each submitted application for entry of data in the register of companies as well as all completed entries of data changes in the register of companies;
- 2) the convening of its general meeting and all decisions adopted at the meeting;
- 3) all planned changes in the credit institution's initial capital of 10 percent or more; and
- 4) discontinuance of individual banking and/or financial services.

(3) In addition to the facts referred to in paragraph (2) of this Article, the credit institution shall submit reports about the following to the Croatian National Bank:

- 1) borrowers whose debt to the credit institution exceeds an amount laid down by the Croatian National Bank, for the purpose of notifying all credit institutions of such borrowers;
- 2) the credit institution's shareholders and persons connected with them holding 3 percent or more of shares with voting rights at the credit institution's general meeting; and
- 3) the structure of groups of connected persons to whom the credit institution is exposed.

(4) The Croatian National Bank may prescribe the content of the reports referred to in paragraphs (2) and (3) of this Article, along with the time limits and method of reporting.

(5) The credit institution's management board shall notify the Croatian National Bank without delay if:

- 1) the liquidity or solvency of the credit institution is jeopardised;
- 2) reasons for expiry or withdrawal of authorisation or for withdrawal of authorisation to provide individual financial services arise; and
- 3) the credit institution's financial position changes to the extent that its own funds fall below the minimum capital requirement referred to in Article 110, paragraph (3) or Article 131 of this Act or the minimum capital adequacy ratio referred to in Article 130 or Article 237 of this Act.

### **Reporting at the request of the Croatian National Bank**

#### **Article 163**

At the request of the Croatian National Bank a credit institution shall deliver reports and information on all matters relevant for the exercise of supervision or oversight and other tasks within the competence of the Croatian National Bank.

## **X OUTSOURCING OF BUSINESS ACTIVITIES**

### **Definition**

#### **Article 164**

(1) 'Outsourcing' means a contractual agreement by which external service providers are engaged to perform activities which would otherwise be performed by the credit institution.

(2) The following shall be eligible service providers:

- 1) a member of a group of credit institutions; or

2) any legal or natural person who, under the regulations of the country where it is established, is authorised to perform the activities subject to outsourcing.

**Conditions for outsourcing**  
**Article 165**

(1) A credit institution shall have in place a sound system of managing risks related to outsourcing.

(2) A credit institution shall prescribe procedures related to outsourcing in its internal bylaws.

(3) A credit institution shall ensure that outsourcing does not impair:

- 1) its regular operation;
- 2) its effective risk management;
- 3) its internal control systems; and
- 4) supervision by the Croatian National Bank.

(4) A credit institution which intends to outsource materially important activities shall notify the Croatian National Bank thereof and submit the prescribed documentation no less than 90 days before concluding a contract with a service provider.

(5) The Croatian National Bank shall assess whether conditions for outsourcing prescribed in this Act and other regulations have been met and notify the credit institution of its assessment within 90 days of receipt of the notification and complete documentation referred to in paragraph (4) of this Article.

**Croatian National Bank regulations relating to outsourcing**  
**Article 166**

The Croatian National Bank shall lay down:

- 1) the term 'materially important activities';
- 2) detailed conditions for outsourcing; and
- 3) the content of documentation to be enclosed with the notification referred to in Article 165, paragraph (4) of this Act.

**XI DEPOSIT INSURANCE**

**Insured deposits**  
**Article 167**

A credit institution authorised by the Croatian National Bank shall insure its deposits, including deposits received by its branches abroad, with the competent institution in the Republic of Croatia pursuant to a special law and regulations adopted under that law.

## **XII BANKING SECRECY**

### **Banking secrecy**

#### **Article 168**

(1) 'Banking secrecy' means a credit institution's obligation to protect the confidentiality of all information, facts and circumstances of which it becomes aware in the course of providing services to clients or in the course of business with individual clients. Credit institutions shall be bound by the obligation of banking secrecy.

(2) For the purposes of this Act, a credit institution's clients shall be all persons who requested or received banking and/or financial services from the credit institution.

### **Obligation of banking secrecy**

#### **Article 169**

(1) Members of the credit institution's bodies, its shareholders or employees and other persons who, due to the nature of their business with or for the credit institution have access to confidential information, shall be bound by the obligation of banking secrecy. They may not divulge confidential information to third parties, use it against the interests of the credit institution or its clients, or enable third parties to make use of it.

(2) The persons referred to in paragraph (1) of this Article shall be bound by the obligation of banking secrecy even after the termination of their employment with the credit institution or after the termination of their status of shareholders or membership in the credit institution's bodies, as well as after the termination of their contract on the performance of activities for the credit institution.

(3) The credit institution's obligation of banking secrecy shall not include the following cases:

- 1) where the client explicitly agrees in writing that certain confidential information may be disclosed;
- 2) where this enables the credit institution to realise its interest when exercising the sale of its receivables;
- 3) where confidential information is disclosed to the Croatian National Bank, the Financial Inspectorate of the Republic of Croatia or another supervisory authority for the purposes of supervision or oversight within their competence;
- 4) where confidential information is exchanged within a group of credit institutions for the purpose of risk management;
- 5) where confidential information is disclosed to a legal person established pursuant to a special law to collect and disseminate information on the creditworthiness of legal and natural persons;
- 6) where credit and/or financial institutions exchange confidential information on clients who defaulted on their obligations, and where such information is disclosed to a legal person established to collect and disseminate such information;

- 7) where confidential information is disclosed during reconciliation procedures conducted in accordance with the provisions of the law governing payment system services;
- 8) where the disclosure of confidential information is essential for collecting and establishing facts in criminal or preliminary proceedings, when requested or ordered in writing by the competent court;
- 9) where the disclosure of confidential information is necessary to carry out foreclosure or bankruptcy proceedings over the property of a client, legacy proceedings or other property-rights proceedings, and such disclosure is requested or ordered in writing by the competent court or public notary in the course of performing the functions entrusted to them pursuant to law;
- 10) where the disclosure of confidential information is necessary to establish the legal relationship between a credit institution and a client in court proceedings, and such disclosure is requested or ordered in writing by the competent court;
- 11) where confidential information is disclosed to the Office for the Prevention of Money Laundering pursuant to the law governing the prevention of money laundering and terrorist financing;
- 12) where confidential information is disclosed to the Office for the Prevention of Corruption and Organised Crime pursuant to the law governing the prevention of corruption and organised crime;
- 13) where confidential information is required by the tax authorities in procedures carried out within the framework of their competence under law, and is disclosed at their written request;
- 14) where confidential information is disclosed to the institution responsible for deposit insurance pursuant to the law governing deposit insurance;
- 15) where the account balance reflects inability to effect payments and the certificate is requested to substantiate the existence of grounds for bankruptcy;
- 16) disclosure of information to insurance undertakings within the procedure of insuring the credit institution's receivables;
- 17) disclosure of information in the course of concluding legal arrangements which have the effect of insuring the credit institution's receivables, such as derivative credit instruments, bank guarantees and similar arrangements;
- 18) disclosure of information, subject to written consent of the credit institution's management board, to a holder of a qualifying holding in the credit institution, to a person intending to acquire a qualifying holding in the credit institution, to a person who acquires the credit institution or with whom the credit institution merges, to a legal person intending to take over the credit institution as well as to auditors, legal and other experts authorised by a holder of a qualifying holding or a potential holder;
- 19) disclosure of information necessary for the exercise of the credit institution's activities which are subject to outsourcing, where information is disclosed to the providers of outsourced activities;
- 20) where a credit institution which provides services of storing and administering financial instruments for the account of clients, including custody services, discloses information on the holder of securities to a credit institution which is the issuer of these non-material securities at its request; and

21) where so provided for in other laws.

(4) Disclosure of confidential information shall not be considered to include:

- 1) disclosure of information in collective form, such that personal or business data on a client cannot be identified; and
- 2) disclosure of information relating to the firm name of an account holder or an account number.

### **Use and protection of confidential information**

#### **Article 170**

(1) The Croatian National Bank, courts, other supervisory authorities and other persons referred to in Article 169, paragraph (3) of this Act, shall use the confidential information they have received under the same Article exclusively for the purpose for which it has been given and may not divulge it to third parties or enable third parties to acquire and make use of such information, except in cases prescribed by law.

(2) The provision of paragraph (1) of this Article shall also apply to all natural persons who work or have worked for the Croatian National Bank, the courts, other supervisory authorities or other persons referred to in Article 169, paragraph (3) of this Act in the capacity of employees or other capacities.

## **XIII BUSINESS BOOKS AND FINANCIAL STATEMENTS**

### **Application of other laws and standards**

#### **Article 171**

(1) A credit institution shall keep business books, other business documentation and records, evaluate assets and liabilities and prepare and publish annual financial statements and annual reports in accordance with applicable regulations and professional standards.

(2) A credit institution shall keep business books and other business documentation and records in such a manner that it is possible to verify at all times whether the credit institution operates in accordance with applicable regulations and professional standards.

### **Bookkeeping documents**

#### **Article 172**

(1) A credit institution shall prepare, check and store bookkeeping documents in accordance with applicable regulations and professional standards.

(2) By way of derogation from paragraph (1) of this Article, a credit institution shall store for a period of at least eleven years:

- 1) documents relating to the opening, closing and recording of changes in payment system and deposit accounts;
- 2) documents relating to other changes not covered by item (1) of this paragraph on the basis of which data have been entered in the credit institution's business books; and
- 3) contracts and other documents relating to the establishment of a business relationship.

(3) The time limit referred to in paragraph (2) of this Article shall mean the period following the end of the year in which the business change occurred, i.e. in which bookkeeping documents were prepared. Where such documents relate to long-term business activities, they shall be kept for the duration of the business relationship and at least eleven years following the end of the year in which the business relationship was terminated.

(4) A credit institution shall store business books for at least eleven years.

### **Chart of Accounts**

#### **Article 173**

(1) The Croatian National Bank may prescribe a chart of accounts for credit institutions.

(2) A credit institution shall follow the chart of accounts for credit institutions referred to in paragraph (1) of this Article.

### **Regulations on statements and reports**

#### **Article 174**

(1) The Croatian National Bank may prescribe:

- 1) the form and content of a credit institution's annual financial statements and consolidated annual financial statements to be delivered to the Financial Agency for the purposes of inclusion in the Register of annual financial statements;
- 2) the form and content of a credit institution's financial statements and other reports for the purposes of the Croatian National Bank, and the method of and time limits for their delivery to the Croatian National Bank; and
- 3) the form and content of a credit institution's annual and consolidated annual report and time limits for their public disclosure and delivery to the Croatian National Bank.

(2) The Croatian National Bank may prescribe the scope and content of financial statements and other data provided by branches of credit institutions of other Member States, the method of and time limits for disclosure or delivery of such statements and other data to the Croatian National Bank.

(3) The Croatian National Bank may prescribe the scope and content of financial statements and other data provided by branches of third-country credit institutions, the

method of and time limits for disclosure or delivery of such statements and other data to the Croatian National Bank.

**Delivery of statements and reports to the Croatian National Bank and their disclosure**

**Article 175**

(1) A credit institution shall deliver to the Croatian National Bank the following reports within 15 days of receipt of the audit report and at the latest within four months following the end of the business year to which the annual financial statements relate:

- 1) a report on the audit of annual financial statements referred to in Article 190 of this Act, including such financial statements; and
- 2) an annual report and consolidated annual report pursuant to the regulations governing the content of such reports.

(2) For the purpose of paragraph (1) of this Article, a business year shall correspond to a calendar year.

(3) A credit institution shall publish its audited unconsolidated annual financial statements together with its annual report on its web site and make them available at the latest within five months following the end of the business year to which the statements relate.

(4) A parent credit institution shall publish its audited consolidated annual financial statements and a consolidated annual report of a group as laid down in the Accounting Act in the manner and within the time limit referred to in paragraph (3) of this Article.

(5) A branch of a credit institution of another Member State and a branch of a third-country credit institution shall publish audited annual financial statements and audited consolidated annual financial statements of their founder and annual reports of their founder, including audit reports, on their web sites in the Croatian language at the latest within 15 days of the expiry of the time limit for disclosure in the country where the founder has its registered office.

(6) The statements referred to in paragraph (5) of this Article shall be prepared and audited in accordance with the regulations of the country where the founder has its registered office.

**XIV PUBLIC DISCLOSURE**

**Public disclosure by credit institutions**

**Article 176**

(1) Credit institutions shall publicly disclose general information on the areas of their operation, in particular regarding:

- 1) risk management objectives and policies;
- 2) persons to which disclosed information relates as well as other information relating to such persons;
- 3) own funds;
- 4) compliance with capital requirements and assessment of internal capital adequacy;
- 5) exposure to counterparty credit risk;
- 6) exposure to credit risk and dilution risk;
- 7) the Standardised Approach to the measurement of credit risk;
- 8) measurement of credit risk under the IRB Approach;
- 9) capital requirements for market risks;
- 10) internal models for the calculation of capital requirements for market risks;
- 11) approaches and the methods and scope of application of approaches for the calculation of capital requirements for operational risk;
- 12) equity instruments in the non-trading book;
- 13) exposure to interest rate risk on items in the non-trading book;
- 14) securitisation; and
- 15) other areas prescribed by the Croatian National Bank.

(2) A credit institution shall publicly disclose that the Croatian National Bank granted or withdrew permission for an individual approach or technique referred to in Article 128 of this Act, and other information relating to such approaches and techniques.

(3) The Croatian National Bank may require from a credit institution one or more additional public disclosures that have not been listed in paragraphs (1) and (2) of this Article.

(4) Credit institutions shall adopt policies for compliance with public disclosure requirements, for assessing the appropriateness of disclosed information, and for their verification and frequency of disclosure.

### **Exemptions from public disclosure**

#### **Article 177**

(1) Exceptionally, a credit institution shall not be required to disclose one or more items of information referred to in Article 176, paragraph (1) of this Act where they are not material. Information shall be regarded as material in public disclosures where its omission or misstatement could change or influence the assessment or economic decision of a user relying on that information for the purpose of making economic decisions.

(2) Exceptionally, a credit institution shall not be required to disclose one or more items of information referred to in Article 176, paragraphs (1) and (2) of this Act where they are regarded as confidential or as information whose disclosure could undermine the credit institution's competitive position or render its investments less valuable.

(3) In the cases referred to in paragraph (2) of this Article, a credit institution shall state in its public disclosures the fact that specific items of information are not disclosed, the reason for non-disclosure and publish more general information about the subject matter, except in cases where such information is deemed to be the information referred to in paragraph (2) of this Article.

### **Method of and time limits for public disclosure**

#### **Article 178**

(1) A credit institution shall disclose on its web site the information referred to in Article 176, paragraphs (1) to (3) of this Act.

(2) For the purpose of public disclosure referred to in Article 176, paragraphs (1) to (3) of this Act, the internal audit function of a credit institution shall regularly, and on an annual basis at a minimum, review the processes ensuring timeliness, validity and accuracy of publicly disclosed information.

(3) The Croatian National Bank shall prescribe the content of and time limits for disclosure of the information referred to in Article 176, paragraphs (1) to (3) of this Act.

(4) A credit institution shall publicly disclose information on the requirements referred to in Article 176, paragraphs (1) and (2) of this Act on an annual basis at a minimum.

(5) A credit institution shall assess whether to disclose individual items of information more frequently than required by the Croatian National Bank where this is necessary in the light of the scale of operations, range of activities, presence in different countries, involvement in different financial sectors and participation in international financial markets and payment, settlement and clearing systems. That assessment shall especially take into account public disclosure of information on own funds, capital requirements for credit risk, market risks and operational risk as well as information on exposure to risks and other items prone to rapid change.

### **Explanation of rating decisions**

#### **Article 179**

A credit institution shall, at the request of a legal person applying for a loan, provide an explanation in writing of its decision on the rating of the applicant. The administrative costs of the written explanation must be appropriate to the size of the loan.

## **XV INTERNAL CONTROL SYSTEMS**

### **Internal control systems**

#### **Article 180**

(1) A credit institution shall establish and implement effective internal control systems in all areas of operation and establish three control functions:

- 1) a risk control function,
- 2) a compliance function, and
- 3) an internal audit function.

(2) The Croatian National Bank may prescribe in detail the scope and method of operation of each individual function referred to in paragraph (1) of this Article.

### **Risk control function**

#### **Article 181**

(1) A credit institution shall establish a permanent and effective risk control function independent from the activities and business lines it monitors and supervises.

(2) A credit institution shall ensure sufficient resources for this function.

(3) The risk control function shall ensure the credit institution's compliance with risk management policies and strategies. Activities related to the risk control function shall include at a minimum:

- 1) risk analysis;
- 2) risk monitoring;
- 3) reporting risks to the management board and other persons; and
- 4) participation in the design, implementation and oversight of risk management methods and models.

### **Compliance function**

#### **Article 182**

(1) A credit institution shall establish a permanent and effective compliance function independent from other activities. A credit institution's compliance function shall be established so as to avoid conflicts of interest between compliance responsibilities and other responsibilities.

(2) A credit institution shall establish and implement a compliance function policy, ensuring that it operates in accordance with relevant regulations, standards, codes and internal bylaws.

(3) A credit institution shall ensure sufficient resources for this function, including an appropriate number of adequately qualified and experienced staff.

(4) When deciding on the organisation of the compliance function, a credit institution shall take into account the type, scale and complexity of services it provides, ensuring that the compliance function is not organised within the framework of the internal audit function.

(5) The activities related to the compliance function shall be at a minimum:

- 1) identifying and assessing the compliance risk to which the credit institution is or might be exposed;
- 2) advising the management board and other responsible persons on the implementation of relevant laws, standards and rules, including informing them on developments in these areas;
- 3) assessing the effects that changes in relevant regulations will have on the operation of a credit institution;
- 4) verifying compliance of new products or procedures with relevant laws and regulations as well as amendments to regulations; and
- 5) providing advice as regards the preparation of training programmes related to compliance.

### **Internal audit Article 183**

(1) A credit institution shall organise an internal audit function as a separate organisational unit, functionally and organisationally independent both from the activities it audits and from other organisational units of the credit institution.

(2) By way of derogation from paragraph (1) of this Article, a credit institution may, subject to the prior approval of the Croatian National Bank, entrust the carrying out of internal audits to an audit firm or to one or more persons not employed with the credit institution in question, provided that at least one of these persons meets the criteria referred to in Article 186, paragraph (1) of this Act.

(3) When deciding whether to grant the approval referred to in paragraph (2) of this Article, the Croatian National Bank shall take into account the nature, scale and complexity of services provided by the credit institution.

(4) A credit institution may entrust the carrying out of internal audits to another credit institution which is a member of the same group of credit institutions in the Republic of Croatia, subject to the prior approval of the Croatian National Bank.

### **Bylaw on internal audit Article 184**

(1) A credit institution's bylaws on internal audit shall lay down at a minimum:

- 1) the objectives and scope of internal audits;
- 2) the organisational structure of the internal audit function;
- 3) the organisational position of the internal audit function within the credit institution, its powers, responsibilities and relationship with other organisational units; and
- 4) the duties and responsibilities of the person responsible for the operation of the internal audit function as a whole.

(2) Bylaws on internal audit shall be adopted by the credit institution's management board, subject to the prior approval of the supervisory board or audit committee.

### **Internal audit activities**

#### **Article 185**

(1) The internal audit function shall carry out the following activities:

- 1) examine and evaluate the adequacy and efficiency of internal control systems;
- 2) assess the implementation and efficiency of risk management procedures and risk assessment methodologies;
- 3) assess the efficiency and reliability of the compliance function;
- 4) assess management reporting systems;
- 5) assess the accuracy and reliability of the accounting records system and financial statements;
- 6) assess strategies and procedures in place to assess the adequacy of internal capital;
- 7) review information systems;
- 8) verify the reliability of the reporting systems and timeliness and accuracy of the reports prescribed in this Act, regulations adopted under this Act and other regulations;
- 9) assess the methods of asset protection;
- 10) assess data collection systems and the validity of information that is publicly disclosed in accordance with Article 176 of this Act;
- 11) carry out other assessments prescribed in this Act and regulations adopted under this Act; and
- 12) all other activities necessary to achieve internal audit objectives.

(2) The internal audit function shall carry out internal audits in accordance with regulations, rules, and professional principles and standards.

### **Persons carrying out internal audits**

#### **Article 186**

(1) A credit institution shall employ on a full time basis at least one person who has attained the title of auditor or internal auditor in accordance with the law governing audits or in accordance with the rules and programme of a professional organisation competent for professional education of internal auditors to carry out internal audits.

(2) Where several persons are entrusted with the carrying out of internal audits, one of these persons, who meets the criteria referred to in paragraph (1) of this Article, shall be appointed the person responsible for the operation of the internal audit function as a whole.

(3) A credit institution shall notify the Croatian National Bank without delay of the appointment of a person responsible for the operation of the internal audit function.

(4) A person carrying out internal audit activities shall not carry out other activities in the credit institution.

(5) The carrying out of internal audits of specific areas may be entrusted to external experts who are not employed with the credit institution. Credit institutions shall notify the Croatian National Bank without delay where external experts are engaged in internal audit activities.

(6) Credit institutions shall provide regular professional education and training for persons carrying out internal audit activities.

### **Internal audit work plan**

#### **Article 187**

(1) Annual internal audit work plans must be based on a documented risk assessment.

(2) A credit institution's management board, subject to the prior opinion of the audit committee and approval of the supervisory board, shall adopt the annual internal audit work plan.

(3) Annual internal audit work plans must include:

- 1) the areas of operation in which the internal audit function shall carry out audits; and
- 2) a description of the content of the audits planned by individual areas.

(4) The internal audit function, on the basis of its annual work plan, shall adopt an operational work plan for each area in which internal audit is planned.

(5) Each credit institution shall adopt an internal audit methodology. This methodology shall include a detailed description of the methods for selecting areas subject to audit and an audit programme for each area subject to audit.

### **Internal audit report**

#### **Article 188**

(1) The internal audit function shall prepare a report on each audit carried out in accordance with the established internal audit operational work plans. The report shall be delivered to the audit committee, the management board member responsible for the areas subject to audit and to responsible persons of the credit institution's organisational unit which is responsible for the areas of operation subject to audit.

(2) If the internal audit function deems it necessary, it shall deliver a report on the audit carried out to all members of the credit institution's management board.

(3) The report referred to in paragraph (1) of this Article shall include:

- 1) a list of all areas subject to audit;

- 2) a description of illegalities and incidents of non-compliance with the credit institution's policies and procedures identified in the course of the audit;
- 3) a description of deficiencies and weaknesses in the areas subject to audit identified in the course of the audit;
- 4) an assessment of the adequacy and efficiency of internal control systems;
- 5) a general assessment of the adequacy and efficiency of risk management;
- 6) proposals, recommendations and time limits for the elimination of illegalities, irregularities, deficiencies and weaknesses identified in the course of the audit; and
- 7) information on the status of the proposals and recommendations for the elimination of illegalities, irregularities, deficiencies and weaknesses made in the course of previous audits.

(4) The internal audit function shall prepare an internal audit report which shall include:

- 1) a report on the realisation of the annual work plan;
- 2) a summary of the most important facts established in the course of the audit of operations; and
- 3) a report on the implementation of proposals and recommendations for the elimination of illegalities, irregularities, deficiencies and weaknesses identified in the course of the audit of operations.

(5) The internal audit function shall deliver the report referred to in paragraph (4) of this Article to the credit institutions' management board and audit committee on a quarterly basis, to the credit institution's supervisory board on a semi-annual basis and to the Croatian National Bank on an annual basis.

(6) The Croatian National Bank may prescribe in detail the content of the report referred to in paragraph (4) of this Article and the time limits for its delivery.

**Notification to the credit institution's management and supervisory board  
and the Croatian National Bank  
Article 189**

Where the internal audit function, in the course of the audit of specific areas of the credit institution's operation, identifies illegalities or violations of risk management rules that jeopardise the liquidity, solvency or safety of the credit institution's operation, it shall immediately notify the credit institution's management and supervisory board, and the Croatian National Bank.

**XVI RELATIONSHIP BETWEEN THE CROATIAN NATIONAL BANK AND  
EXTERNAL AUDITORS**

**Audit requirements  
Article 190**

(1) An audit of the annual financial statements of a credit institution, consolidated annual financial statements of a group of credit institutions in the Republic of Croatia, and of consolidated annual financial statements of the whole group, where group members include non-financial institutions, shall be carried out for each year of business.

(2) The audit referred to in paragraph (1) of this Article shall be carried out in accordance with the laws governing accounting and auditing, unless otherwise provided for in this Act and regulations adopted under this Act.

### **Appointment of an audit firm**

#### **Article 191**

(1) At the credit institution's general meeting, an audit firm shall be appointed to audit the financial statements for the business year. The audit firm must be appointed by 30 September of the business year in question at the latest.

(2) The credit institution's management board shall deliver a decision to appoint an audit firm to the Croatian National Bank within eight days of the adoption of the decision.

(3) The contract on the audit of financial statements for each year of business must be concluded in writing.

### **Restrictions on audit firms**

#### **Article 192**

(1) An audit firm may audit the financial statements of a particular credit institution for no more than seven consecutive years.

(2) An audit of the credit institutions' financial statements shall be carried out by two or more natural persons employed with an audit firm and responsible for carrying out audits (hereinafter: certified auditors).

(3) An audit firm may neither carry out nor be entrusted by a credit institution with auditing the credit institution's financial statements if in the preceding year the audit firm in question derived more than half of its total income from auditing the financial statements of that credit institution or the group of credit institutions of which that credit institution is a member.

### **Protection of auditor independence**

#### **Article 193**

(1) In the event of the termination of a contract on the audit of a credit institution's financial statements, the credit institution and the audit firm shall explain in writing the reasons for the termination to the Croatian National Bank.

(2) An audit firm may not carry out an audit of a credit institution's financial statements if, in the year to which these statements relate, it provided services to the credit institution in question in the field of finance, accounting, internal audit, services related to the valuation of the credit institution, its assets and liabilities, tax-related and other business consulting services or expert opinion services.

(3) The prohibition on the provision of audit services referred to in paragraph (2) of this Article shall refer to all undertakings connected with the credit institution or audit firm in question.

### **Obligations of audit firms**

#### **Article 194**

(1) Following an audit, an audit firm shall prepare a letter of recommendations to the management board and shall deliver it to the credit institution's management board and to the Croatian National Bank.

(2) An audit firm shall notify the Croatian National Bank in writing and without delay if it finds:

- 1) illegalities or facts and circumstances that could in any way jeopardise the continued operation of the credit institution;
- 2) circumstances constituting the reasons for withdrawal of authorisation referred to in Article 67, paragraphs (1) and (2) of this Act;
- 3) a material difference in the assessment of risks inherent in the credit institution's operation and the valuation of its on- and off-balance sheet items and profit and loss account items;
- 4) serious violations of internal bylaws; or
- 5) major weaknesses in the organisation of internal control systems or failures in the implementation of internal control systems.

(3) An audit firm shall notify the Croatian National Bank in writing of any of the facts referred to in paragraph (2) of this Article of which it becomes aware in the course of the audit of financial statements of an undertaking controlled by the credit institution.

(4) The delivery to the Croatian National Bank of the information referred to in paragraphs (1) to (3) of this Article shall not constitute a violation of the auditor's duty to protect the confidentiality of information arising under the law governing audits or arising under the contract.

### **Refusal of audit reports**

#### **Article 195**

(1) Where an audit firm carries out an audit of a credit institution's financial statements contrary to Articles 192 or 193 of this Act, the Croatian National Bank shall refuse the report on the audit of the credit institution's financial statements for that year.

(2) Where the Croatian National Bank establishes that the audit of financial statements has not been carried out or that the audit report has not been prepared in accordance with this Act, subordinate legislation adopted under this Act, the law governing audits and rules of the auditing profession or where, in the course of the supervision of the credit institution's operation or in any other way, it establishes that the audit opinion on the credit institution's financial statements referred to in Article 190 of this Act is not based on true and objective facts, it may refuse the audit report and require the credit institution that the audit be carried out by certified auditors of a different audit firm at the expense of the credit institution.

(3) In the case referred to in the preceding paragraph of this Article, the Croatian National Bank shall not accept audit reports from the audit firm whose audit report has been refused for the next five years.

(4) The Croatian National Bank shall specify the reasons for the refusal of the audit report referred to in paragraph (2) of this Article.

### **Audit for the purposes of the Croatian National Bank** **Article 196**

(1) For the purposes of the Croatian National Bank, an audit firm shall provide an assessment of:

- 1) compliance with risk management rules;
- 2) the operations of the risk control function, the compliance function and the internal audit function;
- 3) the state of the information system and the adequacy of information system management; and
- 4) the regularity, accuracy and completeness of the reports delivered to the Croatian National Bank.

(2) The Croatian National Bank may require the audit firm to provide additional information concerning the audit carried out.

(3) Where the Croatian National Bank establishes that the assessment has not been made in accordance with this Act, subordinate legislation adopted under this Act, the law governing audits and rules of the auditing profession or where, in the course of the supervision of the credit institution's operation or in any other way, it establishes that the assessment is not based on true and objective facts, it may:

- 1) require the auditor to correct or supplement the assessment; or
- 2) refuse the assessment and require the credit institution to obtain another assessment by certified auditors of a different audit firm at the expense of the credit institution.

(4) The Croatian National Bank may prescribe in detail the methodology of the audit for the purposes of the Croatian National Bank as well as the reasons for the refusal of the assessment referred to in paragraph (1) of this Article.

## **XVII SUPERVISION OF CREDIT INSTITUTIONS**

### **XVII.1 GENERAL PROVISIONS**

#### **Supervision**

##### **Article 197**

(1) For the purposes of this Act, 'supervision' means verification of whether a credit institution operates in accordance with risk management rules, other provisions of this Act and regulations adopted under this Act, other laws governing the carrying out of financial activities of credit institutions, regulations adopted under these laws, its own rules, and professional standards and rules.

(2) The Croatian National Bank shall exercise supervision of credit institutions by:

- 1) collecting and analysing reports and information, ongoing monitoring of the operation of credit institutions and other persons required to report to the Croatian National Bank pursuant to this Act and regulations adopted under this Act or other laws and regulations adopted under these laws;
- 2) carrying out on-site examinations of credit institutions' operation; and
- 3) imposing supervisory measures.

(3) The Croatian National Bank shall prescribe in detail the conditions and methods of exercising supervision and imposing supervisory measures, as well as obligations of the credit institution's bodies in the course of and following supervision exercised by the Croatian National Bank.

#### **Main objectives of supervision**

##### **Article 198**

The main objectives of supervision exercised by the Croatian National Bank shall be to maintain confidence in the Croatian banking system, and promote and safeguard its safety and stability.

#### **Oversight of the implementation of other laws**

##### **Article 199**

(1) In addition to supervision, the Croatian National Bank shall exercise oversight of the implementation of the Act on the Croatian National Bank, regulations adopted under that act, and the implementation of other laws and regulations for which it is competent.

(2) The provisions of this Title shall apply *mutatis mutandis* to the exercise of oversight procedures referred to in paragraph (1) of this Article.

### **Entities subject to supervision** **Article 200**

(1) The following entities shall be subject to supervision:

- 1) credit institutions with registered offices in the Republic of Croatia and their branches outside the Republic of Croatia;
- 2) branches of credit institutions with registered offices in other Member States operating in the Republic of Croatia;
- 3) branches of credit institutions with registered offices in third countries operating in the Republic of Croatia; and
- 4) credit institutions of the Member States in respect of their direct provision of services within the territory of the Republic of Croatia.

(2) Holders of qualifying holdings and persons having close links with a credit institution or persons to whom a credit institution has transferred a significant part of its business activities shall, at the request of the Croatian National Bank, deliver to it appropriate reports and information which would be relevant for the purpose of supervising the credit institution in question.

(3) For the purpose of supervising a credit institution, authorised persons of the Croatian National Bank may carry out examinations of the part of operation of persons having close links with the credit institution in question or persons to whom the credit institution has transferred a significant part of its business activities.

(4) Supervision of the operation of credit institutions may also be exercised by other institutions and supervisory authorities within the framework of their competence under law.

(5) Where a different supervisory authority is responsible for the supervision of one of the persons referred to in paragraph (2) of this Article, the Croatian National Bank may participate in the supervision of that person's operations with the respective supervisory authority or may require from that supervisory authority the data and information which would be relevant for the supervision of the credit institution in question.

(6) All provisions on the supervision of credit institutions shall apply *mutatis mutandis* to the supervision of credit institutions' representative offices operating within the territory of the Republic of Croatia.

(7) The provisions of paragraph (1) of this Article shall not preclude the exercise of supervision on a consolidated basis in accordance with this Act.

## **XVII.2 SUPERVISION OF CREDIT INSTITUTIONS WITH REGISTERED OFFICES IN THE REPUBLIC OF CROATIA**

### **Scope of supervision of credit institutions**

#### **Article 201**

(1) In the course of supervision, the Croatian National Bank shall:

- 1) verify the legality of the credit institution's operation, including the organisational structure, strategies, policies, processes and procedures adopted by the credit institution to comply with regulations;
- 2) assess the risks to which the credit institution is or might be exposed in its operation; and
- 3) assess the financial position and risks to which the credit institution is or might be exposed as a result of its relationship with other persons within a group of credit institutions.

(2) On the basis of the verifications and assessments referred to in paragraph (1) of this Article, the Croatian National Bank shall determine whether the organisational structure, strategies, policies and procedures implemented by the credit institution and the own funds held by the credit institution ensure an adequate management and coverage of the risks to which the credit institution is or might be exposed in its operation.

(3) In establishing the frequency and intensity of the verifications and assessments referred to in paragraph (1) of this Article, the Croatian National Bank shall take into account the size, systematic importance, nature, scale and complexity of the activities of the credit institution concerned.

(4) The Croatian National Bank shall carry out the verifications and assessments referred to in paragraph (1) of this Article for each credit institution on an annual basis at a minimum.

### **Reports and information**

#### **Article 202**

(1) The Croatian National Bank may request reports and information on all matters necessary for the exercise of supervision from members of the credit institution's management board and persons employed with the credit institution.

(2) The Croatian National Bank may request a written report on the matters referred to in paragraph (1) of this Article from members of the credit institution's management board and persons employed with the credit institution. The time limit for the preparation of these reports may not be shorter than three days.

### **Persons authorised to exercise supervision**

## **Article 203**

(1) The supervision referred to in Article 197, paragraph (2), item (1) of this Act shall be exercised by employees of the Croatian National Bank (persons authorised by virtue of their employment status).

(2) The supervision referred to in Article 197, paragraph (2), item (2) of this Act shall be exercised by employees of the Croatian National Bank authorised by the Governor of the Croatian National Bank (hereinafter: authorised persons).

(3) Exceptionally, the Governor of the Croatian National Bank may authorise a certified auditor, an audit firm or other professionally qualified persons to carry out tasks related to on-site examinations of credit institutions' operation.

(4) When carrying out tasks related to on-site examinations of credit institutions' operation for which they have been authorised by the Governor of the Croatian National Bank, the persons referred to in paragraph (3) of this Article shall have the same powers and responsibilities as authorised persons of the Croatian National Bank.

## **On-site examination Article 204**

(1) A credit institution shall enable authorised persons, at their request, to carry out an on-site examination at the registered office of the credit institution and in other localities in which the credit institution or another person with its authorisation carries out activities and operations subject to the supervision of the Croatian National Bank.

(2) A credit institution shall enable authorised persons, at their request, to carry out an examination of business books, business documentation, and administrative or business records as well as an examination of information and related technologies, to the extent necessary for an individual examination.

(3) A credit institution shall deliver to authorised persons, at their request, computer print-outs, copies of business books, business documentation, and administrative or business records in a paper form or in the form of an electronic record in the medium and format required by the authorised persons. The credit institution shall provide authorised persons with a standard interface providing access to the system for database management used by the credit institution, for the purpose of carrying out an examination supported by computer programmes.

(4) The examination referred to in paragraphs (1) and (2) of this Article shall be carried out by authorised persons during working hours of the credit institution. When necessary because of the scope or nature of the examination, the credit institution shall enable authorised persons to carry out the examination outside its working hours.

**Notification of an on-site examination**  
**Article 205**

(1) The Croatian National Bank shall deliver a notification of an on-site examination to a credit institution at least eight days before the beginning of the on-site examination. The notification shall include the subject of supervision and information on what the credit institution should prepare for authorised persons for the purpose of carrying out the on-site examination.

(2) By way of derogation from the provision of paragraph (1) of this Article, authorised persons may deliver the notification of an on-site examination as late as the beginning of the on-site examination.

**Conditions for carrying out on-site examinations**  
**Article 206**

(1) A credit institution shall provide authorised persons with adequate premises in which they can carry out an on-site examination without disturbance and without the presence of other persons.

(2) In the course of an on-site examination, a credit institution shall ensure the presence of the credit institution's authorised persons in the premises referred to in paragraph (1) of this Article, who may, at the request of authorised persons of the Croatian National Bank, provide appropriate explanations concerning the business books, business documentation, business events, and administrative or business records subject to supervision.

**Examination of computerised business books and records**  
**Article 207**

(1) A credit institution which processes data by computer or keeps its business books and other records by computer shall, at the request of authorised persons, ensure the conditions and adequate means of support for the examination of business books and records, and the possibility of examining whether the computerised data have been appropriately processed.

(2) A credit institution shall submit to authorised persons documentation that provides a complete description of the accounting system's operation. The documentation must provide a clear view of the subsystems and databases of the accounting system. The documentation must enable authorised persons to gain an insight into:

- 1) programme solutions;
- 2) processing procedures for data processed by computer;
- 3) controls ensuring appropriate data processing; and
- 4) controls ensuring data confidentiality, integrity and availability.

## **End of an examination of a credit institution**

### **Article 208**

(1) A report on examination findings shall be prepared following an examination of the credit institution's operation.

(2) Following an examination of a credit institution, the Croatian National Bank may, depending on the findings in the report, impose supervisory measures on the credit institution, pursuant to the provisions of this Act.

(3) By way of derogation from the provisions of paragraph (1) of this Article, a report on examination findings shall not be prepared where the examination has been carried out in accordance with the provisions of Article 197, paragraph (2), item (1) of this Act and where no illegalities or weaknesses and deficiencies in the credit institution's operation have been identified that would require the imposition of supervisory measures.

## **On-site examination of credit institutions having their registered offices in the Republic of Croatia and operating in another Member State**

### **Article 209**

(1) Where a credit institution having its registered office in the Republic of Croatia operates directly or through a branch within the territory of another Member State, the Croatian National Bank or persons it has authorised may carry out an on-site examination after notifying in advance the competent supervisory authority of the host Member State.

(2) The Croatian National Bank may request the competent authority of the host Member State in which the credit institution provides services to carry out an on-site examination of that credit institution's branch.

(3) The Croatian National Bank may participate in an on-site examination of the credit institution's branch situated in a Member State regardless of who carries out the on-site examination.

## **Measures against branches situated in host Member States**

### **Article 210**

Where a credit institution having its registered office in the Republic of Croatia and providing services through a branch in another Member State violates the regulations of that Member State despite a warning by the competent or supervisory authority of the host Member State, the Croatian National Bank shall impose supervisory measures in accordance with this Act and shall notify the respective authority of these measures without delay.

## **Notification to competent authorities of host Member States**

### **Article 211**

Where the Croatian National Bank withdraws authorisation to provide banking and/or financial services of a credit institution having its registered office in the Republic of Croatia or prohibits the credit institution from providing individual financial services by imposing a supervisory measure, it shall without delay notify the competent authority of the Member States in which that credit institution provides services directly or through a branch.

## **XVII.3 SUPERVISION OF CREDIT INSTITUTIONS OF OTHER MEMBER STATES PROVIDING SERVICES IN THE REPUBLIC OF CROATIA THROUGH BRANCHES OR DIRECTLY**

### **Powers to supervise the operation of branches**

#### **Article 212**

(1) Where a credit institution having its registered office in another Member State operates through a branch within the territory of the Republic of Croatia, the competent authority of the home Member State may:

- 1) carry out an on-site examination on its own initiative or through a person it authorised, after notifying the Croatian National Bank in advance; or
- 2) request the Croatian National Bank or a person authorised by the Croatian National Bank to carry out an on-site examination of the branch of a credit institution of that Member State within the territory of the Republic of Croatia.

(2) By way of derogation from paragraph (1) of this Article, the Croatian National Bank may carry out on-site examinations of credit institutions of other Member States concerning the implementation of regulations in accordance with Article 86, paragraph (2) of this Act.

(3) The competent authority of the home Member State may participate in on-site examinations of branches of credit institutions of that Member State regardless of who carries out the on-site examination of the branch.

(4) Information of which the Croatian National Bank becomes aware or receives in the course of the on-site examination referred to in paragraph (1), item (2) of this Article, may be disclosed to the persons referred to in Article 225, paragraph (1), item (8) of this Act only with the express agreement of the persons or competent authorities which disclosed the information or the competent authorities of the Member State in which the on-site examination was carried out.

### **Supervisory measures against credit institutions of other Member States**

#### **Article 213**

(1) Where the Croatian National Bank finds that a credit institution of another Member State which provides services in the Republic of Croatia breaches the provisions of Article 86 of this Act, it shall require the credit institution in question to eliminate the illegalities identified within a specified time limit.

(2) Where a credit institution fails to eliminate the illegalities identified and to deliver evidence on their elimination to the Croatian National Bank within the time limit referred to in paragraph (1) of this Article, the Croatian National Bank shall notify the competent authority of the respective home Member State.

(3) Where the competent authority of the home Member State, within 60 days of receipt of the notification referred to in the preceding paragraph, fails to take any measures, or where such measures are inadequate to the extent that the credit institution persists in breaching the provisions of Article 86 of this Act, the Croatian National Bank shall notify the competent authority of the home Member State of the measures to be taken to prevent the credit institution from further breaching the respective provisions.

(4) Following the delivery of the notification referred to in the preceding paragraph to the competent authority of the home Member State, the Croatian National Bank may impose measures on a credit institution breaching the provisions of Article 86 of this Act within the territory of the Republic of Croatia.

(5) Where, despite the measures referred to in paragraph (4) of this Article, the credit institution persists in breaching the respective provisions, the Croatian National Bank may adopt a decision to prohibit the provision of services by that credit institution within the territory of the Republic of Croatia and notify the competent authority of the home Member State and the European Commission.

### **Measures to protect the general good**

#### **Article 214**

The Croatian National Bank may, within its powers, impose measures to prevent or eliminate violations of regulations adopted in the interests of the general good on credit institutions of other Member States which provide services within the territory of the Republic of Croatia. As a final measure, the Croatian National Bank may prohibit such credit institutions from providing mutually recognised services within the territory of the Republic of Croatia.

### **Precautionary measures**

#### **Article 215**

By way of derogation from the provisions of Articles 213 and 214 of this Act, where the Croatian National Bank assesses that the interests of the depositors, investors or other clients of a credit institution of another Member State which provides services within the territory of the Republic of Croatia are jeopardised or could be jeopardised, the Croatian

National Bank shall take precautionary measures against the credit institution in question. The Croatian National Bank shall as soon as practicable notify the competent authority of the home Member State in question and the European Commission of the precautionary measures taken.

**Supervision of the liquidity of branches of credit institutions of other Member States**  
**Article 216**

The Croatian National Bank shall exercise supervision of the liquidity of branches of credit institutions of other Member States.

**Supervision of credit institutions of other Member States directly providing services in the Republic of Croatia**  
**Article 217**

The provisions of Articles 212 to 215 of this Act shall apply *mutatis mutandis* to the supervision of credit institutions of other Member States directly providing services in the Republic of Croatia.

**XVII.4 SUPERVISION OF BRANCHES OF THIRD-COUNTRY CREDIT INSTITUTIONS PROVIDING SERVICES IN THE REPUBLIC OF CROATIA**

**Supervision of branches of third-country credit institutions providing services in the Republic of Croatia**  
**Article 218**

The Croatian National Bank shall exercise supervision of branches of third-country credit institutions providing services in the Republic of Croatia in accordance with the method and scope of supervision of credit institutions with registered offices in the Republic of Croatia.

**XVII.5 SUPERVISION FEES**

**Annual supervision fees**  
**Article 219**

For exercising the supervision referred to in Article 197 of this Act, credit institutions with registered offices in the Republic of Croatia and branches of credit institutions with registered offices outside the Republic of Croatia shall pay supervision fees to the Croatian National Bank. The Croatian National Bank shall lay down the amount and method of calculating and paying supervision fees.

**Basis for the calculation of annual supervision fees charged to credit institutions**  
**Article 220**

The basis for the calculation of annual supervision fees charged to credit institutions with registered offices in the Republic of Croatia shall be the total amount of capital requirements, and the basis for the calculation of annual supervision fees charged to branches of credit institutions with registered offices outside the Republic of Croatia shall be their total assets and contingent liabilities related to their operation in the Republic of Croatia.

## **XVIII COOPERATION WITH COMPETENT AUTHORITIES AND EXCHANGE OF INFORMATION**

### **Cooperation between the competent authorities of the Republic of Croatia**

#### **Article 221**

(1) The Croatian National Bank and other supervisory authorities in the Republic of Croatia shall, at the request of an individual supervisory authority, deliver to that authority all information on a credit or financial institution necessary for the exercise of supervisory and oversight tasks with regard to the credit or financial institution, in authorisation or approval procedures, or when deciding on other specific applications or requests within its competence.

(2) The authorities referred to in paragraph (1) of this Article shall notify each other of withdrawal of authorisations, illegalities and irregularities identified in the course of supervision and oversight, and of imposed measures for their elimination if such findings and imposed measures are relevant for the operation of the other authority.

### **Cooperation and exchange of information between the Croatian National Bank and the competent authorities of the Member States**

#### **Article 222**

(1) The Croatian National Bank and the competent authorities of other Member States shall cooperate in the supervision of credit institutions which, directly or through a branch, provide services within the territory of the Republic of Croatia and the territory of the Member State in question.

(2) The Croatian National Bank and the competent authorities of the Member States shall exchange all information concerning:

- 1) the management and ownership of credit institutions referred to in paragraph (1) of this Article that is likely to facilitate their supervision;
- 2) the examination of the conditions governing the issue of authorisations or approvals of the supervisory authorities; and
- 3) information likely to facilitate the supervision of such institutions, in particular with regard to liquidity, solvency, deposit insurance, the limiting of large exposures, administrative and accounting procedures and internal control systems.

(3) Where, pursuant to Article 212 of this Act, the Croatian National Bank receives confidential information from a competent authority of another Member State, or where it receives confidential information in the course of the supervision of branches of credit institutions of other Member States, it may divulge such information to third parties only with the agreement of the competent authority of the Member State in question.

### **Duty to protect the confidentiality of information**

#### **Article 223**

(1) Employees of the Croatian National Bank, auditors or other experts who work or have worked under authorisation of the Croatian National Bank shall be bound by the duty to protect the confidentiality of all information of which they become aware in the course of supervision on behalf of the Croatian National Bank.

(2) The persons referred to in paragraph (1) of this Article shall not divulge confidential information to any person or government body whatsoever, except in summary or collective form, such that individual credit institutions cannot be identified.

(3) The duty to protect the confidentiality of information referred to in paragraph (1) of this Article shall not refer to:

- 1) confidential information divulged for the purposes of criminal or preliminary proceedings, when requested or ordered in writing by the competent court;
- 2) the delivery of confidential information in cases where bankruptcy or compulsory winding-up proceedings have been initiated against a credit institution or in related court proceedings, with the exception of those concerning natural or legal persons involved in attempts to reorganise that credit institution; or
- 3) the public disclosure referred to in Article 228 of this Act.

(4) The duty to protect the confidentiality of information referred to in paragraphs (1) to (3) of this Article shall also relate to information which the Croatian National Bank or the persons referred to in paragraph (1) of this Article receive on the basis of the exchange of information with other supervisory authorities.

### **Use of confidential information**

#### **Article 224**

The Croatian National Bank may use confidential information of which it becomes aware in the course of supervision or other activities within its competence for the following purposes only:

- 1) to check that the conditions governing the issue of authorisations or approvals on which it decides pursuant to this Act are met;
- 2) to exercise supervision, on a non-consolidated and/or consolidated basis, of credit institutions, in particular with regard to the monitoring of liquidity, solvency, large exposures, administrative and accounting procedures, and internal control systems, as well as to impose supervisory measures;

- 3) in violation proceedings; or
- 4) in Administrative Court procedures against final decisions of the Croatian National Bank.

**Persons not bound by the duty to protect the confidentiality of information**  
**Article 225**

(1) The Croatian National Bank may communicate confidential information to the following persons in the Republic of Croatia or in the Member States:

- 1) competent authorities entrusted with the public duty of supervising credit institutions, financial institutions, insurance undertakings and financial markets for the purpose of performing their duties under law;
- 2) courts and other bodies or legal persons responsible for the operations involved in the winding-up or bankruptcy of credit institutions and in other similar proceedings for the purpose of performing their duties under law;
- 3) auditors responsible for carrying out audits of credit and financial institutions for the purpose of performing their duties under law;
- 4) the institutions responsible for deposit insurance where necessary for the purpose of performing operations related to deposit insurance;
- 5) the authorities responsible for overseeing the bodies involved in the winding-up or bankruptcy of credit institutions and in other similar proceedings where necessary for the purpose of performing their supervisory tasks;
- 6) the authorities responsible for overseeing auditors responsible for carrying out audits of credit and financial institutions where necessary for the purpose of performing their supervisory tasks;
- 7) the European Central Bank, central banks or other bodies authorised and responsible for implementing monetary policy, or other bodies responsible for overseeing payment systems;
- 8) the ministry responsible for finance or other government bodies of another Member State responsible for proposing legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings where necessary for the purpose of exercising supervision within their competence; and
- 9) a clearing house which provides clearing and settlement services and is recognised under the national law governing the financial instruments market if the Croatian National Bank deems that it is necessary to communicate the information to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

(2) With the aim of strengthening the stability, including integrity of the financial system, the Croatian National Bank may exchange information with other competent authorities and bodies in the Republic of Croatia and the Member States, which are responsible under law for the investigation and punishment of breaches of company law, when requested or ordered in writing by the competent court. Information that the Croatian National Bank received from other competent authorities may be disclosed to

third parties only with the agreement of the authorities which have disclosed the information.

(3) The Croatian National Bank may disclose the information received under Article 223, paragraph (4) of this Act to the bodies referred to in paragraph (1), items (5), (6) and (9) and paragraph (2) of this Article only with the express agreement of the competent authorities which have disclosed the information.

(4) Persons to whom the Croatian National Bank delivers confidential information in accordance with paragraphs (1) and (2) of this Article may use such information only for the purpose for which it has been given and subject to the duty to protect the confidentiality of information referred to in Article 223 of this Act.

### **Cooperation with the competent authorities of third countries**

#### **Article 226**

(1) The Croatian National Bank may conclude an agreement with one or more competent authorities of third countries for the purpose of exercising supervision of branches of credit institutions having their registered offices in the Republic of Croatia and operating in third countries or branches of third-country credit institutions intending to provide services in the Republic of Croatia.

(2) The Croatian National Bank may deliver confidential information to persons from third countries whose position is equal to that of the persons referred to in Article 225, paragraph (1), items (1) to (6) and paragraph (2) of this Act, if all of the following conditions are met:

- 1) it has concluded an agreement with such persons providing for the mutual exchange of information;
- 2) persons from a third country are subject to the duty to protect the confidentiality of information which is in its content equal to that referred to in Article 223 of this Act;
- 3) the information delivered to persons in a third country is to be used only for the purpose for which it has been given; and
- 4) it is guaranteed that the information received from the competent authorities of the Member State shall be disclosed to third parties only with the express agreement of the authorities which have disclosed the information.

### **Notification to the European Union bodies**

#### **Article 227**

(1) The Croatian National Bank shall notify the European Commission of:

- 1) the authorities and bodies referred to in Article 225, paragraph (1), items (5) and (6) and paragraph (2) of this Act;
- 2) the issue and withdrawal of authorisations to credit institutions;
- 3) the refusal of a credit institution's application to establish a branch in another Member State; and

4) the assumption and delegation of responsibility referred to in Article 285, paragraphs (1) and (2) of this Act.

(2) The Croatian National Bank shall notify the European Commission and the European Banking Committee of:

1) all authorisations granted to branches of credit institutions having their registered offices in a third country; and

2) the existence and content of the bilateral agreements referred to in Article 292, paragraphs (3) and (4) of this Act.

(3) The Croatian National Bank shall establish a list of parent financial holding companies in the RC and shall communicate it to the competent authorities of the other Member States and to the European Commission.

(4) The Croatian National Bank shall notify the other competent authorities involved in supervision on a consolidated basis and the European Commission of the procedures referred to in Article 303, paragraph (3) of this Act.

(5) The Croatian National Bank shall also notify the European Commission, European Banking Committee and other European Union bodies of other matters where so required by the *acquis communautaire*.

### **Public disclosure by the Croatian National Bank Article 228**

(1) The Croatian National Bank shall publicly disclose the following information:

1) the texts of laws, decisions, instructions and general guidance adopted in the Republic of Croatia in the field of supervision;

2) the manner of exercise of the options and discretions available in Community legislation;

3) the general criteria and methodologies used in the supervision of credit institutions;

4) aggregate statistical data which the Croatian National Bank collects pursuant to this Act and regulations adopted under this Act; and

5) lists of recognised exchanges and External Credit Assessment Institutions.

(2) The information referred to in paragraph (1) of this Article shall be disclosed in a way which allows for meaningful comparison of the approaches adopted by the competent authorities of the different Member States. Such information shall be updated regularly and accessible at the web sites of the Croatian National Bank.

(3) In addition to the information referred to in paragraph (1) of this Article, the Croatian National Bank may disclose other information within its competence.

## **XIX SUPERVISORY MEASURES**

## **XIX.1 GENERAL PROVISIONS**

### **Supervisory measures**

#### **Article 229**

(1) The objective of the supervisory measures of the Croatian National Bank shall be to take actions at an early stage to improve the safety and stability of credit institutions' operation and to eliminate illegalities.

(2) Supervisory measures shall be implemented by means of:

- 1) a memorandum of understanding, or
- 2) a decision.

### **Memorandum of understanding**

#### **Article 230**

(1) Following an examination of a credit institution, the Croatian National Bank may conclude a memorandum of understanding with the credit institution if it finds weaknesses or deficiencies in the credit institution's operation which do not constitute a violation of regulations or if, following the examination, it deems it necessary that the credit institution takes actions and procedures to improve its operation.

(2) The Croatian National Bank may propose to a credit institution the conclusion of a memorandum of understanding if:

- 1) the credit institution has begun to eliminate weaknesses or deficiencies in the course of or immediately following the examination;
- 2) the credit institution is ready to commit itself to eliminating the weaknesses or deficiencies within proposed time limits and in the manner proposed;
- 3) the credit institution's track record with regard to measures, objections and instructions of the Croatian National Bank suggests that the credit institution will completely fulfil the commitments to be taken under the memorandum; or
- 4) the credit institution's track record, and the frequency of weaknesses, deficiencies or illegalities identified, suggest that the credit institution will in its future operations ensure the legality, safety and stability of operation.

(3) A memorandum of understanding shall lay down:

- 1) the time limit for and the method to be used by the credit institution to eliminate the weaknesses or deficiencies in its operation; and
- 2) the time limit for and the frequency of the credit institution's reporting to the Croatian National Bank on the fulfilment of the commitments taken under the memorandum of understanding.

### **Consequences of a failure to fulfil the commitments taken under a memorandum of understanding**

#### **Article 231**

Where a credit institution fails to fulfil the commitments taken under a memorandum of understanding within the time limit and in the manner laid down in the memorandum, the Croatian National Bank shall adopt a decision and issue the warning referred to in Article 50 of this Act to the responsible person of the credit institution's management board.

## **XIX.2 ELIMINATION OF ILLEGALITIES IDENTIFIED IN THE COURSE OF SUPERVISION OF CREDIT INSTITUTIONS**

### **Decision to impose supervisory measures**

#### **Article 232**

(1) The Croatian National Bank may adopt a decision to impose supervisory measures on a credit institution if in the course of supervision it finds:

- 1) that by its actions or omission of particular actions the credit institution acted contrary to laws or other regulations;
- 2) weaknesses and deficiencies in the credit institution's operation which do not constitute a violation of regulations; or
- 3) that it is necessary that the credit institution takes actions and procedures to improve its operation.

(2) The decision referred to in paragraph (1) of this Article shall lay down the time limit for and the method to be used by the credit institution to eliminate the illegalities, weaknesses or deficiencies in its operation.

(3) A credit institution may, no later than 15 days before the expiry of the time limit referred to in paragraph (2) of this Article, apply for an extension of that time limit by a reasoned request. The Croatian National Bank shall decide on the extension at the latest by the expiry of the time limit laid down in the decision.

### **Decisions in the course of on-site examinations**

#### **Article 233**

By way of derogation from Article 232 of this Act, the Croatian National Bank may also adopt a decision in the course of an on-site examination and order the credit institution to take measures to eliminate particular illegalities, which the credit institution shall implement without delay where:

- 1) authorised persons find in the course of the on-site examination that the credit institution has not organised its operation or does not keep business books, business documentation and other business records in such a manner that it is at all times possible to verify whether the credit institution carries out its activities in accordance with risk management regulations and rules;
- 2) the credit institution carries out its activities in a manner which may worsen or jeopardise its liquidity or solvency; or

3) it is impossible to continue the on-site examination of the credit institution.

**Certified auditor's report on the elimination of illegalities**  
**Article 234**

Where, in the course of supervision, the Croatian National Bank finds that a credit institution acts contrary to the regulations governing the keeping of business books, administrative and other records that the credit institution is required to keep, or where it finds other major illegalities, it may adopt a decision ordering the credit institution to submit to the Croatian National Bank a certified auditor's report on the elimination of these illegalities within a specified time limit.

**Reporting to the Croatian National Bank on the implementation of decisions**  
**Article 235**

(1) In its decision to impose supervisory measures, the Croatian National Bank may also order the credit institution to report to the Croatian National Bank within a specified time limit on the implementation of the measures imposed.

(2) The credit institution shall report to the Croatian National Bank on the implementation of measures and shall enclose relevant documents and other evidence within the time limit referred to in paragraph (1) of this Article. In the cases referred to in Article 234 of this Act, the credit institution shall also deliver a certified auditor's report on the elimination of illegalities.

(3) Where the Croatian National Bank finds that the measures imposed have not been implemented or have not been implemented within the time limit and in the manner imposed by the decision, it may adopt a decision to impose a new supervisory measure on the credit institution.

**XIX.3 TYPES OF SUPERVISORY MEASURES**

**Types of supervisory measures**  
**Article 236**

(1) The Croatian National Bank may:

- 1) order the supervisory board to remove the chairperson, a member or members of the management board from office and appoint a new chairperson, member or members of the credit institution's management board;
- 2) order a credit institution's management board to adopt and ensure the implementation of a plan of measures to ensure the minimum capital required under Articles 29, 110 and 131 of this Act;
- 3) order a credit institution to convene a general meeting and propose appropriate steps, such as the increase in capital, removal of a member or members of the

supervisory board from office and appointment of a new member or members of the supervisory board;

4) temporarily prohibit a credit institution from:

- granting credits and providing recognised and other financial services to persons with inadequate creditworthiness;
- concluding transactions with individual shareholders, members of the management or supervisory board, procurators, undertakings having close links with the credit institution, and persons connected with the credit institution;
- acquiring units in collective investment undertakings;
- carrying out particular or all activities of a certain type, broadening its branch network, or introducing new products, or it may restrict the introduction of new products;
- receiving new deposits or other repayable funds from the public;
- distributing dividends or any other form of profit;

5) limit increases in a credit institution's assets and risk-bearing off-balance sheet items;

6) order the reduction of operating expenses, including restrictions on salaries and other income of members of the management and supervisory board and employees of a credit institution;

7) order the implementation of measures imposing specific operating conditions on a credit institution, which may include minimum or maximum interest rates, maturities of claims and liabilities and other conditions;

8) order the sale of a credit institution's tangible and other assets;

9) order the shareholders to sell shares of a credit institution or order a credit institution to sell shares or holdings or to wind-up a subsidiary of the credit institution;

10) order a credit institution's management board to adopt and implement measures to:

- change the areas of operation or the structure of services provided by the credit institution;
- limit the granting of credits;
- reduce or limit the credit institution's exposures;
- improve collection procedures concerning past due exposures;
- correctly evaluate on- and off-balance sheet items;
- improve governance arrangements in accordance with Article 113 of this Act;
- improve the strategies and procedures in place to assess the adequacy of internal capital;
- improve the accounting and information systems;
- improve the internal control and internal audit systems;

11) order a credit institution to apply a specific provisioning policy or treatment of assets in terms of capital requirements;

12) order a credit institution to reduce the risk inherent in the activities, products and systems of the credit institution in its subsequent operations;

13) order a credit institution's supervisory board to appoint appropriate committees for specific areas of operation within the competence of the supervisory board;

14) order a credit institution to improve or limit the use of a particular approach or model referred to in Article 128 of this Act;

15) impose other measures on a credit institution; or

16) impose other measures in the course of oversight in accordance with Article 199 of this Act.

(2) The Croatian National Bank shall impose one or more of the following measures to credit institutions whose capital adequacy ratio is below 12 percent but equal to or higher than 9 percent:

- 1) prohibit the distribution of any form of profit;
- 2) order the reduction of a credit institution's expenses;
- 3) limit increases in a credit institution's assets, including risk-bearing off-balance sheet items;
- 4) prohibit a credit institution from acquiring shares or holdings in other legal persons, from establishing new branches or broadening its business network in any other way, and from introducing new operations;
- 5) prohibit the increase in exposures to a single person; or
- 6) order a credit institution's management board to propose at the credit institution's general meeting the adoption of a decision on recapitalisation.

(3) In addition to the measures referred to in paragraph (2) of this Article, the Croatian National Bank shall impose one or more of the following measures to credit institutions whose capital adequacy ratio is below 9 percent but higher than 6 percent:

- 1) require that a credit institution or its subsidiary undertakings change, reduce or stop performing a certain activity for which the Croatian National Bank establishes that it has created significant losses for the credit institution or which poses a major risk for the credit institution;
- 2) order a credit institution to suspend one or more persons with special rights and responsibilities;
- 3) require that the interest rates on received deposits do not exceed the market interest rates for comparable amounts and maturities;
- 4) restrict salaries and other income of persons with special rights and responsibilities and employees of a credit institution; or
- 5) order the shareholders to sell shares of a credit institution or order a credit institution to sell shares or holdings or to wind-up another legal person in whose capital the credit institution participates if it establishes that there is a threat that a subsidiary credit institution or other legal person will become unable to make payments and that it poses a significant risk for the credit institution.

### **Capital adequacy ratio and own funds requirement in excess of the minimum level**

#### **Article 237**

(1) The Croatian National Bank shall order a credit institution to ensure a higher capital adequacy ratio or hold own funds in excess of the minimum level prescribed in this Act if it has been established in the course of supervision that its minimum own funds do not ensure the coverage of all risks and the adequate management of the risks to which the credit institution is or might be exposed, and if the credit institution has not established and/or does not consistently implement:

- 1) adequate governance arrangements in accordance with the provisions of Article 113 of this Act and risk management regulations;
- 2) sound administrative and accounting procedures and adequate internal control systems for identifying and monitoring large exposures in accordance with the provisions of Article 113, item (3) of this Act; or
- 3) sound strategies and procedures to assess the adequacy of internal capital in accordance with the provisions of Article 111 of this Act and risk management regulations.

(2) The Croatian National Bank shall order a credit institution to ensure a higher capital adequacy ratio or hold own funds in excess of the minimum level referred to in paragraph (1) of this Article if the Croatian National Bank establishes that it is unlikely that the measures referred to in Article 236 of this Act will improve the risk management system and strategies and procedures in place to assess the adequacy of internal capital of the credit institution within the specified time limit.

(3) In the decision to order the credit institution to hold own funds in excess of the minimum level referred to in Article 131 of this Act, the Croatian National Bank may also impose other measures referred to in Article 236 of this Act.

#### **Trustee of the Croatian National Bank Article 238**

(1) Where it deems it necessary, the Croatian National Bank may appoint a trustee to a credit institution:

- in addition to imposing the supervisory measures referred to in Article 236, paragraphs (2) and (3) of this Act; or
- in addition to a liquidity loan granted by the Croatian National Bank.

(2) The trustee referred to in paragraph (1) of this Article shall be appointed by the Governor of the Croatian National Bank.

(3) The trustee shall be appointed for a period laid down in a decision on the appointment not exceeding six months. This period may be extended to another six months by a special decision of the Governor of the Croatian National Bank.

(4) The trustee shall monitor the implementation of the supervisory measures imposed and shall report on that implementation and on the credit institution's position to the Croatian National Bank.

#### **Trustee's rights Article 239**

(1) A trustee shall have the right to be present at meetings of the management and supervisory board and meetings of other bodies of the credit institution and to participate in their work, without having the right to vote.

(2) A trustee shall have the right to convene meetings of the management and supervisory board of the credit institution concerned.

(3) A trustee may not transfer his powers to other persons and is responsible for his work to the Croatian National Bank.

(4) The credit institution and all its bodies shall make available to the trustee all relevant documentation and shall provide him access to its business books.

### **Expiry of trustee's powers Article 240**

Trustee's powers shall expire on the date:

- 1) of expiry of the period laid down in the decision on the appointment or the decision extending that period;
- 2) of revocation of his appointment;
- 3) of cancellation of the decision on the appointment;
- 4) of the appointment of a special administration; or
- 5) of the opening of bankruptcy proceedings against the credit institution.

## **XX SPECIAL ADMINISTRATION AND SPECIAL MANAGEMENT**

### **XX.1 SPECIAL ADMINISTRATION**

#### **Procedures when the continued operation of a credit institution is uncertain Article 241**

(1) In cases of violations of laws and other regulations or in situations when the financial position of a credit institution is such that its continued operation is uncertain, the Croatian National Bank may:

- 1) withdraw authorisation to provide particular financial services;
- 2) appoint a special administration;
- 3) withdraw the credit institution's authorisation;
- 4) initiate the compulsory winding-up of the credit institution; or
- 5) submit a request to initiate bankruptcy proceedings.

(2) A credit institution that initiated voluntary winding-up proceedings or against which compulsory winding-up proceedings have been initiated or bankruptcy proceedings have been opened may not change its activity so as to cease to provide banking services and continue operating, but must close the winding-up or bankruptcy proceedings and apply for its removal from the register of companies.

**Decision to appoint a special administration**  
**Article 242**

(1) The Croatian National Bank shall adopt a decision to appoint a special administration in the following cases:

1) where a credit institution was ordered to implement supervisory measures and it failed to begin implementing such measures or failed to implement such measures in a timely fashion, owing to which its continued operation could jeopardise its liquidity or solvency and where a special administration is necessary to protect the interests of the credit institution's creditors;

2) where a credit institution fails to meet the minimum capital adequacy ratio of 12 percent despite the supervisory measures imposed;

3) where the capital adequacy ratio is equal to or lower than 6 percent; or

4) where a credit institution's continued operation would, or could, jeopardise its liquidity or solvency and it is necessary to protect the interests of the credit institution's creditors.

(2) By way of derogation from the provisions of paragraph (1) of this Article, where the Croatian National Bank establishes the existence of facts indicating a high probability of improvement of the credit institution's position, it may postpone the adoption of a decision on a special administration.

(3) A special administration shall be appointed by a decision of the Croatian National Bank. The decision shall establish the reasons for the appointment of the special administration in the case in point, the names of the chairperson and members of the special administration, the scope of activities to be performed and/or administered by each member of the special administration, and the duration of the special administration, which may not exceed one year from the date of the adoption of the decision.

(4) The Croatian National Bank shall be competent to issue instructions to the special administration for directing the business of the credit institution.

**Legal remedy against a decision to appoint a special administration**  
**Article 243**

(1) The former management and supervisory board of the credit institution shall have the right to appeal against a decision of the Croatian National Bank to appoint the special administration to the Administrative Court of the Republic of Croatia within eight days of the delivery of the decision in question. The submission of the appeal shall not cause implementation of the disputed decision to be suspended.

(2) The Administrative Court of the Republic of Croatia shall decide on the appeal referred to in paragraph (1) of this Article under an emergency procedure and at the latest within 30 days of its receipt.

### **Members of the special administration**

#### **Article 244**

(1) The special administration of a credit institution shall have at least two members, one of which shall be appointed the chairperson of the special administration.

(2) Members of the special administration shall be appointed to and removed from office by the Croatian National Bank. During the period of the special administration, the Croatian National Bank may remove from office appointed members of the special administration who fail to perform their duties or fail to perform their duties in a satisfactory manner as well as for other justified reasons. In such cases, the Croatian National Bank may appoint a new member of the special administration whose term of office may not exceed the original term of office of the special administration.

(3) The term of office of the chairperson and members shall begin on the date of the adoption of the decision to appoint the special administration regardless of the entry in the register of companies.

(4) Members of the special administration shall jointly represent the credit institution.

(5) The provisions of this Act governing the management board of a credit institution shall apply *mutatis mutandis* to members of the special administration, with the exception of the provisions of Articles 44, 46 and 47 of this Act.

(6) Only persons possessing professional qualifications, abilities and experience appropriate and adequate to direct the business of a credit institution may be appointed as members of the special administration.

(7) Members of the special administration shall have the right to receive remuneration for their work.

(8) The remuneration referred to in paragraph (7) of this Article shall be paid by the Croatian National Bank.

(9) Members of the special administration shall not be liable for damage that may arise in the course of the performance of their duties under this Act, unless it is proven that they acted or failed to act intentionally or as a result of gross negligence.

### **Entry in the register of companies and publication of a decision to appoint a special administration**

#### **Article 245**

(1) A decision to appoint a special administration shall be entered in the register of companies. At the same time, the list of persons authorised to represent the credit institution shall also be changed accordingly.

(2) An application for entry of the data referred to in paragraph (1) of this Article shall be submitted by the special administration within three working days of the adoption of the decision to appoint the special administration of a credit institution. The decision to appoint the special administration shall be enclosed with the application.

(3) The Croatian National Bank shall deliver the decision to appoint the special administration to the credit institution without delay.

#### **Legal effects of a decision to appoint a special administration** **Article 246**

(1) On the date of the adoption of a decision to appoint the special administration of a credit institution, all the powers of the former members of the management and supervisory board shall cease.

(2) All decisions within the competence of the supervisory board shall be adopted by the special administration.

#### **Duty to cooperate on the part of former management board members and employees of the credit institution** **Article 247**

(1) Former members of the credit institution's management board and other authorised persons with special powers and responsibilities shall provide the special administration immediate access to all business and other documentation of the credit institution and prepare a report on the transfer of operations to the special administration.

(2) The former members of the credit institution's management board shall provide the special administration all explanations and additional reports on the credit institution's operation.

(3) All employees of the credit institution shall be required to cooperate with the special administration.

(4) Members of the special administration shall have the right to dismiss persons who hinder their work and, as circumstances may require, request the assistance of the competent body of the Ministry of the Interior.

#### **Activities of the special administration** **Article 248**

- (1) The special administration shall direct the business of the credit institution.
- (2) To improve the financial soundness of the credit institution, the special administration may in particular:
  - 1) adopt decisions to sell the credit institution's tangible and other assets;
  - 2) limit increases in the credit institution's assets and risk-bearing off-balance sheet items;
  - 3) take measures to reduce operating expenses; and
  - 4) take other measures it deems necessary.

**Regular reports of the special administration**  
**Article 249**

- (1) The special administration shall deliver to the Croatian National Bank a report on the credit institution's financial position and operating conditions, together with an assessment of its financial soundness and the prospects for its continued operation at the latest within three months of its appointment.
- (2) The report referred to in paragraph (1) of this Article shall be based on the last available financial statements and other reports of the credit institution prepared for the purposes of the Croatian National Bank and shall include an assessment which shall specifically address:
  - 1) an assessment of the willingness of the credit institution's shareholders to provide additional funds to ensure the minimum level of own funds or sufficient capital to ensure the financial soundness of the credit institution;
  - 2) unforeseen expenditures which materially influence the credit institution's obligations;
  - 3) an assessment of possible measures to eliminate financial difficulties of the credit institution and an assessment of the costs of implementing these measures; and
  - 4) an assessment of the existence of conditions for the initiation of the compulsory winding-up or of grounds for bankruptcy of the credit institution.

**Additional reports of the special administration**  
**Article 250**

At the request of the Croatian National Bank, the special administration shall deliver additional reports and information on all matters relevant for the exercise of supervision or oversight and for assessing the credit institution's financial position and the prospects for its continued operation.

**Increase in the credit institution's initial capital to ensure the financial soundness of the credit institution**  
**Article 251**

(1) Where, based on the reports of the credit institution's special administration referred to in Articles 249 and 250 of this Act, the Croatian National Bank assesses that, to ensure the minimum level of own funds or the minimum capital adequacy ratio, or to eliminate the reasons for the credit institution's illiquidity or potential inability to make payments, it is necessary to increase the credit institution's initial capital by new financial investments, the Croatian National Bank shall order the special administration to convene the credit institution's general meeting and to propose the adoption of a decision to increase the initial capital.

(2) The special administration shall announce the convening of the credit institution's general meeting for the purpose of deciding on the increase in the initial capital at the latest within eight days of receipt of the Croatian National Bank's order referred to in paragraph (1) of this Article, and the general meeting shall be convened at the latest within 15 days of the announcement.

(3) An invitation to the general meeting shall contain a warning to the credit institution's shareholders about the legal effects referred to in Article 263, paragraph (1), item (2) of this Act.

### **Convening of the general meeting Article 252**

(1) Where, in the report referred to in Article 249 of this Act, the special administration proposes acquisition of the credit institution, its merger with another credit institution or other actions intended to improve its financial soundness, which are within the competence of the general meeting under the Companies Act, the Croatian National Bank shall order the special administration to convene the credit institution's general meeting and to propose the adoption of the decision.

(2) The special administration shall announce the convening of the credit institution's general meeting for the purpose of deciding on matters within its competence which are intended to improve the financial position of the credit institution at the latest within eight days of receipt of the Croatian National Bank's order referred to in paragraph (1) of this Article, and the general meeting shall be convened at the latest within 15 days of the announcement.

(3) An invitation to the general meeting shall contain a warning to the credit institution's shareholders about the legal effects referred to in Article 263, paragraph (1), item (2) of this Act.

### **Assessment of special administration's performance Article 253**

(1) The Croatian National Bank shall assess the performance of the special administration on a quarterly basis at a minimum.

(2) Where, based on the report of the credit institution's special administration referred to in Article 249 or 250 of this Act, the Croatian National Bank assesses that the credit institution's financial position has improved during the period of the special administration so that the credit institution has attained the minimum level of own funds and the minimum capital adequacy ratio in accordance with this Act and that it is able to regularly settle its due obligations, it shall order the special administration to convene the general meeting.

(3) In the case referred to in paragraph (2) of this Article, the shareholders shall appoint a new supervisory board at the general meeting. Subject to the prior approval of the Croatian National Bank, the supervisory board shall appoint a new management board of the credit institution. The powers of the special administration shall cease on the date of the appointment of the new management board.

(4) Where, based on the report of the credit institution's special administration referred to in Article 249 or 250 of this Act, the Croatian National Bank assesses that the credit institution's financial position cannot not improve under the special administration so that the credit institution attains the minimum level of own funds and the minimum capital adequacy ratio in accordance with this Act and so that it is able to regularly settle its due obligations, the Croatian National Bank shall adopt a decision to initiate compulsory winding-up proceedings or submit a request to open bankruptcy proceedings.

(5) Where, based on the report of the credit institution's special administration referred to in Article 249 of this Act, the Croatian National Bank assesses that the credit institution's financial position has not improved during the 12-month period of the special administration so that the credit institution has attained the minimum level of own funds and the minimum capital adequacy ratio in accordance with this Act and so that it is able to regularly settle its due obligations, the Croatian National Bank shall adopt a decision to initiate compulsory winding-up proceedings or submit a request to open bankruptcy proceedings.

(6) In the case referred to in paragraph (5) of this Article, the Croatian National Bank may, in exceptional circumstances, adopt a decision to extend the term of office of the special administration for a period not exceeding six months if the conditions for the opening of bankruptcy proceedings are not met and if the Croatian National Bank assesses that in the following six months the credit institution would be able to meet the minimum level of own funds and the minimum capital adequacy ratio in accordance with this Act and be able to regularly settle its due obligations.

## **XX.2 SPECIAL MANAGEMENT AND REORGANISATION OF BRANCHES OF THIRD-COUNTRY CREDIT INSTITUTIONS**

**Decision to appoint a special management of a branch of a third-country credit institution**  
**Article 254**

(1) The Croatian National Bank shall adopt a decision to appoint a special management of a branch of a third-country credit institution providing services in the Republic of Croatia (hereinafter: decision on a special management) in the following cases:

- 1) where a branch of a third-country credit institution was ordered to implement supervisory measures and it failed to begin implementing such measures or failed to implement such measures in a timely fashion, owing to which its continued operation could jeopardise its liquidity or solvency and where a special management is necessary to protect the interests of its creditors;
- 2) where a branch of a third-country credit institution fails to meet the minimum capital adequacy ratio of 12 percent despite the supervisory measures imposed;
- 3) where its capital adequacy ratio is equal to or lower than 6 percent; or
- 4) where continued operation of a branch of a third-country credit institution would, or could, jeopardise its liquidity or solvency and it is necessary to protect the interests of its creditors.

(2) By way of derogation from the provisions of paragraph (1) of this Article, where the Croatian National Bank establishes the existence of facts indicating a high probability of improvement of the branch's position, it may postpone the adoption of a decision on a special management.

(3) A special management shall be appointed by a decision of the Croatian National Bank. The decision shall establish the reasons for the appointment of the special management in the case in point, the names of special management members, the scope of activities to be performed and/or administered by each member of the special management, and the duration of the special management, which may not exceed one year from the date of the adoption of the decision.

(4) The Croatian National Bank shall be competent to issue instructions to the special management for directing the business of the branch.

**Legal remedy against a decision on a special management**  
**Article 255**

(1) The former management of a branch and a third-country credit institution (founder) shall have the right to appeal against the Croatian National Bank's decision on the special management to the Administrative Court of the Republic of Croatia within eight days of the delivery of the decision in question. The submission of the appeal shall not cause implementation of the disputed decision to be suspended.

(2) The Administrative Court of the Republic of Croatia shall decide on the appeal referred to in paragraph (1) of this Article under an emergency procedure and at the latest within 30 days of its receipt.

**Application of the provisions of this Act to the special management of a branch of a third-country credit institution**

**Article 256**

The provisions of Articles 244, 245, 247, 248, 249, 250 and 253 of this Act shall apply *mutatis mutandis* to the special management of a branch of a third-country credit institution.

**Legal effects of a decision on the special management**

**Article 257**

On the date of the adoption of a decision on the special management, all the powers of the former persons responsible for directing the business of the branch shall cease, with the exception of the powers referred to in Article 243, paragraph (1) and Article 264, paragraph (1) of this Act.

**XXI WINDING-UP OF CREDIT INSTITUTIONS**

**XXI.1 VOLUNTARY-WINDING UP OF CREDIT INSTITUTIONS**

**Initiation of voluntary winding-up proceedings**

**Article 258**

(1) A decision on the dissolution of a credit institution may be adopted at the credit institution's general meeting.

(2) Before adopting the decision referred to in paragraph (1) of this Article, the credit institution's management and supervisory board shall consult the Croatian National Bank.

(3) Liquidators of a credit institution shall notify the Croatian National Bank on the decision referred to in paragraph (1) of this Article on the first working day of the adoption of the decision.

(4) Liquidators shall publish the decision referred to in paragraph (1) of this Article in the Official Gazette and at least two daily newspapers published in the Republic of Croatia.

**Liquidators of a credit institution in voluntary winding-up proceedings**

**Article 259**

(1) A credit institution shall have at least two liquidators.

(2) Only natural persons who meet the criteria laid down for members of the credit institution's management board in accordance with this Act may be appointed as liquidators of a credit institution.

### **Duties of liquidators**

#### **Article 260**

(1) Liquidators of a credit institution shall finalise pending activities, collect the claims, realise assets of the credit institution and settle obligations to creditors.

(2) To the extent necessary for carrying out of winding-up proceedings, liquidators may conclude new transactions.

(3) By way of derogation from paragraph (2) of this Article, liquidators may not receive new deposits or other repayable funds from the public.

### **Application of the provisions of this Act in the course of the voluntary winding-up**

#### **Article 261**

(1) The provisions of this Act shall apply *mutatis mutandis* to credit institutions undergoing voluntary winding-up proceedings.

(2) The Croatian National Bank shall prescribe the manner of application of the provisions of this Act in the cases referred to in paragraph (1) of this Article.

### **Establishment of the grounds for bankruptcy on the part of the liquidator**

#### **Article 262**

Should liquidators assess in the course of voluntary winding-up proceedings that any of the grounds referred to in Article 273 of this Act have arisen, they shall without delay submit a request to open bankruptcy proceedings and immediately notify the Croatian National Bank.

## **XXI.2 COMPULSORY WINDING-UP OF CREDIT INSTITUTIONS**

### **Initiation of compulsory winding-up proceedings**

#### **Article 263**

(1) The Croatian National Bank shall adopt a decision to initiate the compulsory winding-up in the following cases:

1) where, based on the report of the special administration referred to in Article 249 or 250 of this Act, it assesses that the credit institution's financial position cannot improve under the special administration so that the credit institution attains the minimum level

of own funds and the minimum capital adequacy ratio in accordance with this Act and that it is unable to regularly settle its due obligations, provided there are no grounds for the opening of bankruptcy proceedings;

2) where the general meeting convened under Article 251, paragraphs (1) and (2) and Article 252, paragraphs (1) and (2) of this Act refuses to adopt a decision to increase the credit institution's initial capital or fails to adopt a decision on acquisition or merger or other, similar decision;

3) where, based on the report of the special administration referred to in Article 249 or 250 of this Act, it assesses that the credit institution's financial position has not improved during the 12-month period or, in exceptional circumstances, the 18-month period under the special administration so that the credit institution has attained the minimum level of own funds and the minimum capital adequacy ratio in accordance with this Act and that it is unable to regularly settle its due obligations, provided there are no grounds for the opening of bankruptcy proceedings;

4) where the credit institution's authorisation has been withdrawn due to any of the reasons laid down in Article 67, paragraph (1), items (2) to (4) and paragraph (2), items (1) to (8) of this Act;

5) where it assesses that the voluntary winding-up could be detrimental to the credit institution's creditors;

6) where approval for a member of the credit institution's management board has been withdrawn, where a management board member has been removed from office or failed to perform the function of a management board member for more than six months and the supervisory board failed to appoint a new management board member in the following three months in accordance with this Act, so that the credit institution's management board does not have at least two members; or

7) where the general meeting adopts a decision to change the credit institution's activity so as to cease to provide banking services.

(2) The Croatian National Bank shall adopt a decision to initiate the compulsory winding-up at the latest within thirty days from the following:

1) in the case referred to in paragraph (1), item (1) of this Article, the expiry of the date of establishing the inability to improve the credit institution's financial position by appointing a special administration,

2) in the case referred to in paragraph (1), item (2) of this Article, the expiry of the date of convening the general meeting;

3) in the case referred to in paragraph (1), item (3) of this Article, the expiry of the date of establishing that the credit institution's financial position has not, despite the appointment of a special administration, improved in the manner required under this Act;

4) in the case referred to in paragraph (1), item (5) of this Article, the expiry of the date of establishing that the voluntary winding-up would be detrimental to the credit institution's creditors;

5) in the case referred to in paragraph (1), item (6) of this Article, the expiry of the three-month period in which a new management board member has not been appointed; or

6) in the case referred to in paragraph (1), item (7) of this Article, the expiry of the date of convening the general meeting.

(3) In the case referred to in paragraph (1), item (4) of this Article, the Croatian National Bank shall adopt a decision to withdraw the credit institution's authorisation at the same time as it adopts a decision to initiate compulsory winding-up proceedings.

**Legal remedy against a decision on the compulsory winding-up**  
**Article 264**

(1) The former management and supervisory board of the credit institution shall have the right to appeal against a decision of the Croatian National Bank to initiate the compulsory winding-up of the credit institution to the Administrative Court of the Republic of Croatia within eight days of the delivery of the decision in question. The submission of the appeal shall not cause implementation of the disputed decision to be suspended.

(2) The Administrative Court of the Republic of Croatia shall decide on the appeal referred to in paragraph (1) of this Article under an emergency procedure and at the latest within 30 days of its receipt.

**Appointment of liquidators and publication of a decision on the compulsory winding-up**  
**Article 265**

(1) In the decision referred to in Article 263 of this Act, the Croatian National Bank shall appoint the institution responsible for deposit insurance as the liquidator.

(2) The Croatian National Bank shall deliver a decision to initiate the compulsory winding-up to the competent commercial court and publish it in the Official Gazette and at least two daily newspapers published in the Republic of Croatia.

(3) The Croatian National Bank shall deliver a decision on the compulsory winding-up of a credit institution to the institution responsible for deposit insurance on the date of the adoption of the decision.

(4) On receipt of the decision referred to in paragraph (1) of this Article, the institution responsible for deposit insurance shall immediately take all actions necessary to protect the rights of the credit institution's creditors.

**Liquidators in compulsory winding-up proceedings**  
**Article 266**

(1) Within 24 hours of receipt of the decision referred to in Article 263 of this Act, the institution responsible for deposit insurance shall appoint two or more liquidators.

(2) Only persons who meet the criteria laid down for members of the credit institution's management board in accordance with this Act may be appointed as liquidators.

### **Legal effects of the compulsory winding-up**

#### **Article 267**

(1) On the date of the appointment of liquidators, all the powers of the former members of the credit institution's management and supervisory board and of its general meeting shall cease, with the exception of the powers of the former management and supervisory board referred to in Article 264, paragraph (1) of this Act.

(2) In the course of the compulsory winding-up, the powers of the credit institution's supervisory board and of its general meeting shall be exercised by the institution responsible for deposit insurance.

### **Reports on progress in compulsory winding-up proceedings**

#### **Article 268**

At the request of the Croatian National Bank, the institution responsible for deposit insurance shall deliver a report on progress in winding-up proceedings.

### **Establishment of the grounds for bankruptcy on the part of the liquidator**

#### **Article 269**

Should liquidators assess in the course of compulsory winding-up proceedings that any of the grounds referred to in Article 273 of this Act have arisen, they shall without delay submit a request to open bankruptcy proceedings and immediately notify the Croatian National Bank.

### **Application of the provisions of this Act in the course of the compulsory winding-up**

#### **Article 270**

(1) The provisions of this Act shall apply *mutatis mutandis* to credit institutions undergoing compulsory winding-up proceedings.

(2) The Croatian National Bank shall prescribe the manner of application of the provisions of this Act in the cases referred to in paragraph (1) of this Article.

## **XXI.3 WINDING-UP OF BRANCHES OF THIRD-COUNTRY CREDIT INSTITUTIONS**

### **Application of the provisions of this Act in the course of the winding-up of branches of third-country credit institutions**

#### **Article 271**

(1) The provisions of Articles 259 to 270 of this Act shall apply *mutatis mutandis* to branches of third-country credit institutions undergoing winding-up proceedings.

(2) In addition to the reasons referred to in Article 263, paragraph (1) of this Act, the Croatian National Bank shall adopt a decision to initiate the compulsory winding-up of a branch of a third-country credit institution if the branch fails to comply with the order of the Croatian National Bank referred to in Article 89, paragraph (4) of this Act.

## **XXII BANKRUPTCY OF CREDIT INSTITUTIONS**

### **XXII.1 BANKRUPTCY OF CREDIT INSTITUTIONS**

#### **Application of the provisions of the Bankruptcy Act Article 272**

The provisions of the Bankruptcy Act shall apply *mutatis mutandis* to bankruptcy of credit institutions, unless otherwise prescribed in this Act.

#### **Grounds for bankruptcy Article 273**

Bankruptcy proceedings against a credit institution may be opened only after establishing the existence of one of the following grounds for bankruptcy:

- 1) the credit institution is unable to repay deposits that are due and payable as defined in the law governing deposit insurance for 21 consecutive days without interruption;
- 2) the credit institution is unable to meet its due and payable financial obligations not included in item (1) of this Article for 60 consecutive days; or
- 3) the credit institution's assets do not cover its existing obligations.

#### **Submission of a request to open bankruptcy proceedings Article 274**

(1) A request to open bankruptcy proceedings against a credit institution may be submitted by:

- 1) the Croatian National Bank,
- 2) the credit institution's creditors,
- 3) the management board of the credit institution itself, or
- 4) liquidators of the credit institution.

(2) The Croatian National Bank may submit a request to open bankruptcy proceedings against a credit institution acting *ex officio* or as one of the credit institution's creditors.

(3) In a request to open bankruptcy proceedings, the Croatian National Bank shall state facts and circumstances indicating the existence of any of the grounds for bankruptcy.

(4) In a request to open bankruptcy proceedings, the Croatian National Bank shall propose the setting of the protective measures under the provisions of the Bankruptcy Act which it deems necessary to protect the creditors' interests and the debtor's assets.

(5) When a request to open bankruptcy proceedings against a credit institution is submitted by a creditor of the credit institution, the creditor shall demonstrate the existence of the claim and of any of the grounds for bankruptcy.

#### **Hearing to give statements on a request to open bankruptcy proceedings** **Article 275**

(1) The competent court shall schedule and hold a hearing at which statements on a request to open bankruptcy proceedings shall be given at the latest within ten days of receipt of the request to open bankruptcy proceedings.

(2) To the hearing referred to in paragraph (1) of this Article, the court shall be required to invite a representative of the Croatian National Bank and hear his testimony regarding the existence of grounds for bankruptcy.

(3) When a request to open bankruptcy proceedings is submitted by the Croatian National Bank, at the hearing referred to in paragraph (1) of this Article, the court shall be required, without examining the economic and financial position of the credit institution and without conducting expert examination, to decide on the request to open bankruptcy proceedings.

(4) The competent court shall deliver a decision on a request to open bankruptcy proceedings to the Croatian National Bank as well.

#### **Appointment of a trustee in bankruptcy** **Article 276**

Before appointing a trustee in bankruptcy of a credit institution, a bankruptcy judge shall hear a representative of the Croatian National Bank on the qualities required of a person to be appointed a trustee in bankruptcy.

#### **Repayment of required reserves** **Article 277**

(1) After the opening of bankruptcy proceedings against a credit institution and his/her appointment, a trustee in bankruptcy shall within three days of the opening of bankruptcy proceedings submit a request to the Croatian National Bank for the repayment of required reserves.

(2) The Croatian National Bank shall act on the request referred to in paragraph (1) during the next calculation period.

**Claims of bankruptcy creditors with higher priority claims**  
**Article 278**

Claims of bankruptcy creditors with higher priority claims shall include:

- 1) gross claims of the credit institution's employees and former employees arising from the employment relationship up to the date of the opening of bankruptcy proceedings, severance payments up to the amount laid down by law or collective agreement and claims for damages due to industrial injury or occupational disease;
- 2) claims of the Croatian National Bank;
- 3) claims of the institution responsible for deposit insurance based on deposits insured in accordance with a special law;
- 4) claims based on the difference between the total amount of household claims and the amount repaid based on the deposits insured with the institution responsible for deposit insurance;
- 5) claims of natural and legal persons who are not shareholders of the credit institution undergoing bankruptcy proceedings;
- 6) claims of holders of hybrid and subordinated debt instruments that were issued under the condition that in the event of the bankruptcy of the credit institution they rank before the claims of shareholders and holders of other hybrid and subordinated debt instruments; and
- 7) all other claims against the debtor with the exception of those ranked as lower priority claims.

**Notification to the Croatian National Bank**  
**Article 279**

A bankruptcy judge shall deliver a decision on the stay of bankruptcy proceedings and a decision on the closure of bankruptcy proceedings to the Croatian National Bank as well.

**XXII.2 BANKRUPTCY OF BRANCHES OF THIRD-COUNTRY CREDIT INSTITUTIONS**

**Application of the provisions of this Act to the bankruptcy of branches of third-country credit institutions**  
**Article 280**

The provisions of Articles 272 to 279 of this Act governing the bankruptcy of credit institutions shall apply *mutatis mutandis* to the bankruptcy of branches of third-country credit institutions.

**XXIII SUPERVISION ON A CONSOLIDATED BASIS**

**Supervision on a consolidated basis**  
**Article 281**

(1) In addition to exercising supervision of credit institutions in the Republic of Croatia on an individual basis, the Croatian National Bank shall exercise supervision of groups of credit institutions in the RC on a consolidated basis.

(2) The provisions of Titles XVII and XIX of this Act shall apply *mutatis mutandis* to the exercise of supervision on a consolidated basis.

**Group of credit institutions in the Republic of Croatia**  
**Article 282**

(1) A group of credit institutions in the Republic of Croatia shall include credit and financial institutions having their registered offices in the Republic of Croatia or in another country, within which at least one institution has the status of:

- 1) an RC parent credit institution;
- 2) an RC parent financial holding company of which at least one credit institution subsidiary has its registered office in the Republic of Croatia; or
- 3) a credit institution which has its registered office in the Republic of Croatia and is linked by management on a unified basis with another credit or financial institution in the manner referred to in Article 23, item (1) of this Act.

(2) The Croatian National Bank may in particular cases specify that a group of credit institutions in the RC also includes credit and financial institutions linked in the manner referred to in Article 23, item (2) of this Act.

(3) A group of credit institutions in the RC shall also exist where the same RC or EU parent financial holding company which has its registered office in the Republic of Croatia, in addition to having a credit institution subsidiary which has its registered office in the Republic of Croatia, has as subsidiaries credit institutions of other countries.

(4) A group of credit institutions in the RC shall also exist where a credit institution which has its registered office in the Republic of Croatia is a subsidiary of more than one financial holding company with registered offices in the RC and other Member States, and there is a credit institution subsidiary in each of these States, and the credit institution which has its registered office in the Republic of Croatia has the largest balance sheet total relative to the credit institutions in other Member States.

(5) A group of credit institutions in the RC shall also exist where one or more credit institutions with registered offices in the Republic of Croatia have as their parent the same EU parent financial holding company having its registered office in another Member State, or where both a credit institution which has its registered office in the

Republic of Croatia and credit institutions of other countries have as their parent the same EU parent financial holding company having its registered office in another Member State and none of these credit institutions has been authorised in the Member State in which the financial holding company was established, and the credit institution which has its registered office in the Republic of Croatia has the largest balance sheet total relative to the credit institutions in other Member States.

(6) Where a group of credit institutions in the RC exists in accordance with paragraphs (1) to (5) of this Article and Article 283 of this Act, ancillary services undertakings, asset management companies and pension companies shall also be included in the group in accordance with the methods referred to in Article 284 of this Act.

(7) For the purposes of supervision on a consolidated basis, the Croatian National Bank may, on the basis of a request, exclude from consolidation a particular credit or financial institution, an ancillary services undertaking, an asset management company or a pension company where one of the following conditions is met:

- 1) the balance sheet total of the undertaking concerned is less than HRK 80 million and less than 1 percent of the balance sheet total of the RC parent credit institution or another parent undertaking;
- 2) the undertaking concerned does not have a significant influence as far as the objectives of the supervision on a consolidated basis are concerned;
- 3) the inclusion of the undertaking concerned would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned; or
- 4) the undertaking concerned has a registered office in a third country where there are legal impediments to the transfer of the necessary information.

(8) Where several undertakings referred to in paragraph (7) of this Article meet the criteria referred to in item (1) of the same paragraph and they collectively influence the objectives of supervision on a consolidated basis, such undertakings shall be included in a group of credit institutions in the Republic of Croatia.

### **Special cases of inclusion in a group of credit institutions in the RC** **Article 283**

(1) For the purposes of supervision on a consolidated basis, the Croatian National Bank may require inclusion in a group of credit institutions in the RC in the following cases:

- 1) where, in its opinion, a credit institution exercises a significant influence over one or more credit or financial institutions, but without holding a participation or other capital ties; or
- 2) where two or more credit or financial institutions are placed under single management other than pursuant to a contract or their Articles of Association.

(2) The Croatian National Bank may require a credit institution, which is a parent within the meaning of Article 18 of this Act of a legal person that is neither a credit nor financial institution or of a credit institution that is linked with such a legal person in the

manner referred to in Article 23 of this Act, to include in a group of credit institutions in the RC all members of the group and to carry out consolidation in accordance with this Act of all members of the group regardless of their activity, where this is relevant for a comprehensive and objective presentation of the credit institution's financial position and operating results.

(3) In the cases referred to in paragraphs (1) and (2) of this Article, the Croatian National Bank shall determine how consolidation is to be carried out.

**Method of consolidation for the purposes of supervision on a consolidated basis**  
**Article 284**

(1) For the purposes of supervision on a consolidated basis, the Croatian National Bank shall require full consolidation of all subsidiary credit and financial institutions within a group of credit institutions in the RC.

(2) By way of derogation from paragraph (1) of this Article, the Croatian National Bank may require only proportional consolidation where, in its opinion, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital in view of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members referred to in this paragraph shall be clearly established, if necessary by means of formal signed commitments presented by the shareholders and members to the Croatian National Bank.

(3) In cases where institutions are managed on a unified basis, the Croatian National Bank shall determine how consolidation is to be carried out.

(4) The Croatian National Bank shall require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in a group of credit institutions in the RC together with one or more undertakings not included in the group of credit institutions in the RC, where those undertakings' liability is limited to the share of the capital they hold.

(5) In the case of participations or capital ties other than those referred to in paragraphs (1) to (4) of this Article, the Croatian National Bank shall determine whether and how consolidation is to be carried out.

**Assumption and delegation of responsibility for supervision on a consolidated basis**  
**Article 285**

(1) The Croatian National Bank shall also be the competent authority responsible for supervision on a consolidated basis in cases where it has assumed the responsibility for such supervision pursuant to an agreement with the competent authority of another Member State.

(2) The Croatian National Bank may in particular cases, taking into account the relative importance of activities in other Member States of individual members of a group of credit institutions in the RC, by common agreement with the competent authorities of these Member States, delegate the responsibility for supervision on a consolidated basis referred to in Article 281 of this Act to the competent authority of a Member State in which another credit institution within the group has its registered office.

(3) Before adopting a decision to delegate the responsibility referred to in paragraph (2) of this Article, the Croatian National Bank shall give the EU parent credit institution, or EU parent financial holding company, or credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

**Obligations of subsidiary institutions and a parent financial holding company in cases where the Croatian National Bank is the competent authority responsible for supervision on a consolidated basis**

**Article 286**

(1) Subsidiary members of a group of credit institutions in the RC and the parent financial holding company referred to in Article 282, paragraphs (1) and (3) to (5) of this Act shall:

- 1) deliver the data relevant for the purposes of consolidation;
- 2) ensure adequate internal control procedures to verify the correctness of such data and information; and
- 3) deliver the data relevant to determine the scope of consolidation to an RC parent credit institution or the credit institution referred to in Article 127, paragraph (2) of this Act.

(2) An RC parent credit institution or the credit institution referred to in Article 127, paragraph (2) of this Act shall ensure that subsidiary credit institutions and the parent financial holding company deliver to it the data relevant for the purposes of consolidation. If the parent financial holding company fails to deliver the data relevant for the purposes of consolidation, the credit institution shall notify the Croatian National Bank without delay.

(3) Subsidiary members of a group of credit institutions in the RC and the parent financial holding company referred to in Article 282, paragraphs (1) and (3) to (5) of this Act shall enable the Croatian National Bank, as the competent authority responsible for supervision on a consolidated basis, to exercise supervision of their operations for the purpose of verifying the information referred to in paragraphs (1) and (2) of this Article.

(4) The parent undertaking of a credit institution which has its registered office in the Republic of Croatia and is not included in consolidation of the parent undertaking pursuant to Article 282, paragraph (7), items (1) to (3) of this Act shall, at the request

of the Croatian National Bank, deliver information which would be relevant for the purpose of supervising that credit institution.

(5) The legal persons referred to in Article 282, paragraph (7) of this Act the parent undertaking of which is a credit institution in the RC or the financial holding company referred to in Article 282, paragraphs (1) and (3) to (5) of this Act, and which are not included in supervision on a consolidated basis, shall, at the request of the Croatian National Bank, deliver information which would be relevant for the purpose of supervising individual credit institutions within the group of credit institutions in the RC, and enable the carrying out of on-site examinations to verify the information delivered.

(6) Where the persons referred to in paragraph (5) of this Article have their registered offices in other Member States, the examinations referred to in paragraph (5) of this Article shall be carried out in accordance with Article 300 of this Act.

### **Supplementary supervisory tasks on a consolidated basis**

#### **Article 287**

In cases where the Croatian National Bank is the competent authority responsible for the supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies, in addition to the obligations imposed by the provisions of this Act, the Croatian National Bank shall also carry out the following tasks:

- 1) coordination of the gathering and dissemination of relevant or essential information between the competent authorities involved in supervision on a consolidated basis in going concern and emergency situations; and
- 2) planning and coordination of supervisory activities in going concern as well as in emergency situations in accordance with this Act, in cooperation with the competent authorities involved.

### **Deciding on permissions in cases where the Croatian National Bank is the competent supervisory authority**

#### **Article 288**

(1) In cases where the Croatian National Bank is the competent authority responsible for the supervision on a consolidated basis of an EU parent credit institution or a credit institution controlled by an EU parent financial holding company, and where the EU parent credit institution and its subsidiary institutions, or subsidiary credit and other institutions of an EU parent financial holding company submitted a joint application for one of the following permissions, the Croatian National Bank shall cooperate with the competent authorities of the Member States in which there are registered offices of other institutions included in a group of credit institutions in the RC when deciding whether to grant the permission sought, and to determine the terms and conditions, if any, to which such permission should be subject:

- 1) permission to use the IRB Approach for the calculation of risk-weighted exposure amounts for credit risk;
- 2) permission to use the Advanced Measurement Approach for the calculation of capital requirements for operational risk;
- 3) permission to use an internal model for the calculation of the capital requirement for counterparty risk; and
- 4) permission to use an internal model for the calculation of capital requirements for position risk, foreign-exchange risk and/or commodities risk.

(2) The Croatian National Bank shall forward the complete application referred to in paragraph (1) of this Article without delay to the other competent authorities responsible for the supervision of institutions submitting the application in question.

(3) The Croatian National Bank and the other competent authorities shall adopt a joint decision on the application referred to in paragraph (1) of this Article within six months of receipt of the complete application.

(4) In the absence of a joint decision, the Croatian National Bank shall adopt its own decision on the application within the time limit referred to in paragraph (3) of this Article. In the explanation of the decision, the Croatian National Bank shall state the views and reasons for the reservations expressed by the other competent authorities.

(5) The Croatian National Bank shall without delay deliver the fully reasoned decisions referred to in paragraphs (3) and (4) of this Article to the applicants and the other competent authorities referred to in paragraph (2) of this Article.

**Deciding on permissions in cases where the Croatian National Bank is not the  
competent supervisory authority**  
**Article 289**

(1) By way of derogation from Article 128 of this Act, where the competent authority of another Member State is responsible for the supervision on a consolidated basis of an EU parent credit institution or a credit institution controlled by an EU parent financial holding company and where the application referred to in Article 288, paragraph (1) of this Act has been submitted to that competent authority, the Croatian National Bank shall participate in the decision-making procedure regarding the application where the application has been submitted to that competent authority by a subsidiary credit institution which has its registered office in the Republic of Croatia.

(2) In the procedure referred to in paragraph (1) of this Article, the Croatian National Bank shall, on the basis of the joint decision with the competent authorities of the home Member State or on the basis of the decision made exclusively by the competent authorities of the home Member State to which the application referred to in Article 288, paragraph (1) of this Act has been submitted, acting *ex officio*, grant permission or

refuse the application of a subsidiary credit institution which has its registered office in the Republic of Croatia.

(3) The Croatian National Bank shall adopt the decision referred to in paragraph (2) of this Article within two months of receipt of the notification of the adoption of the decision from the competent authority of the Member State in question, unless otherwise provided for in the joint decision.

### **Changes of joint decisions by competent authorities**

#### **Article 290**

Provisions concerning the decision-making procedure regarding permissions shall apply *mutatis mutandis* to the procedure to amend the permissions referred to in Article 288 of this Act.

### **Notification of an emergency situation**

#### **Article 291**

Where an emergency situation arises within a group of credit institutions in the RC for which the Croatian National Bank is the competent authority responsible for supervision on a consolidated basis, and where the emergency situation potentially jeopardises the stability of the financial system in any of the Member States where members of the group have been authorised, the Croatian National Bank shall immediately alert the other competent authorities of the Member States, and the following bodies in each of these States:

- 1) central banks and other bodies with a similar function in their capacity as monetary authorities; and
- 2) other government administration bodies responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings.

### **Cooperation agreements with competent authorities regarding supervision on a consolidated basis**

#### **Article 292**

(1) In order to facilitate and establish effective supervision on a consolidated basis, the Croatian National Bank shall conclude written coordination and cooperation agreements with the other competent authorities involved in supervision.

(2) Under the agreements referred to in paragraph (1) of this Article, additional tasks may be entrusted to the competent authority responsible for supervision on a consolidated basis and procedures for the decision-making process and for cooperation with other competent authorities may be specified.

(3) The Croatian National Bank may, by bilateral agreement, delegate its responsibility for supervision to the competent authorities which authorised and supervise the parent credit institution so that they assume responsibility for supervising the subsidiary credit institution which has its registered office in the Republic of Croatia.

(4) The Croatian National Bank may, by bilateral agreement, assume responsibility for supervision of a credit institution the parent undertaking of which is a credit institution which has its registered office in the Republic of Croatia from the competent authorities which authorised and supervise the credit institution.

### **Exchange of information between the competent authorities of the Member States** **Article 293**

(1) The Croatian National Bank shall cooperate with the competent authorities of other Member States and provide them with any information which is essential or relevant for the exercise of supervisory tasks. In this regard, the Croatian National Bank shall communicate to other competent authorities:

- 1) on request, all relevant information or all information relevant or related to the exercise of the other authorities' supervisory tasks; or
- 2) on its own initiative, all information essential for the exercise of the other authorities' supervisory tasks.

(2) Where the Croatian National Bank is the competent authority responsible for consolidated supervision of an EU parent credit institution or a credit institution controlled by an EU parent financial holding company, it shall provide the competent authorities in other Member States who supervise subsidiaries of these parents all relevant information. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account.

(3) For the purposes of this Article, information shall be regarded as essential if it could materially influence the assessment of the financial soundness of a particular member of a group of credit institutions in another Member State. It shall include, in particular, the following items:

- 1) identification of the group structure of all major credit institutions in a group, as well as the competent authorities responsible for the supervision of the credit institutions in the group;
- 2) major procedures for collecting information from the credit institutions in a group, and verification of that information;
- 3) adverse developments in credit institutions or in other members of a group, which could seriously affect other credit institutions in the group; and
- 4) serious violations by and measures taken against a credit institution in accordance with this Act, including the imposition of any additional capital requirement under Article 237 of this Act and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of capital requirements for operational risk.

(4) Where the Croatian National Bank is the competent authority responsible for the supervision of a credit institution controlled by an EU parent credit institution, it shall whenever possible contact the competent authority responsible for the supervision of the EU parent credit institution when it needs information regarding the use of approaches and methodologies for calculating capital requirements that may already be available to that competent authority.

(5) Where the Croatian National Bank is the competent authority responsible for supervision on a consolidated basis and needs information on a group of credit institutions which has already been given to another competent authority, the Croatian National Bank shall contact this authority whenever possible in order to prevent duplication of reporting to the various competent authorities involved in supervision.

### **Cooperation with the competent authorities of the Member States which are involved in supervision on a consolidated basis**

#### **Article 294**

(1) The Croatian National Bank shall, before adopting a decision that is of importance for other competent authorities' supervisory tasks, consult these competent authorities with regard to:

- 1) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of the competent authorities; and
- 2) the measures referred to in Article 236 of this Act it intends to take, including the imposition of an additional capital requirement under Article 237 of this Act and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of capital requirements for operational risk.

(2) In the cases referred to in paragraph (1), item (2) of this Article, the Croatian National Bank shall consult the competent authority responsible for supervision on a consolidated basis.

(3) By way of derogation from paragraphs (1) and (2) of this Article, the Croatian National Bank may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In such cases, the Croatian National Bank shall immediately notify the other competent authorities of the decision adopted.

### **Regulations regarding supervision on a consolidated basis**

#### **Article 295**

Regarding supervision on a consolidated basis, the Croatian National Bank may prescribe in detail:

- 1) obligations of an RC parent credit institution or a credit institution which has its registered office in the RC and is a subsidiary of an RC parent financial holding company;
- 2) conditions under which individual members of a group of credit institutions in the RC may be included in or excluded from supervision on a consolidated basis;
- 3) provisions on the method of consolidation for the purposes of supervision on a consolidated basis;
- 4) the form and content of consolidated financial statements and supervisory reports, and the method of and time limits for reporting to the Croatian National Bank;
- 5) the method of identifying a parent credit institution; and
- 6) the method of and conditions for reporting on intra-group transactions for mixed-activity holding companies and their subsidiary undertakings.

**Obligations of mixed-activity holding companies and their subsidiaries regarding supervision on a consolidated basis**

**Article 296**

(1) Where the parent undertaking of one or more credit institutions is a mixed-activity holding company, this holding company and its subsidiaries shall deliver all information which would be relevant for the purpose of supervising the credit institution subsidiaries either directly to the competent authorities responsible for the authorisation and supervision of those credit institutions or to the competent authorities via the credit institution subsidiaries.

(2) The Croatian National Bank or a person authorised by the Governor of the Croatian National Bank may carry out on-site examinations to verify information received from mixed-activity holding companies and their subsidiaries.

(3) If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure prescribed in Article 299 of this Act may be used.

(4) If a mixed-activity holding company or one of its subsidiaries has its registered office in a Member State other than that in which the credit institution subsidiary has its registered office, on-site examinations to verify information shall be carried out in accordance with the procedures referred to in Article 300 of this Act.

**Supervision of intra-group transactions**

**Article 297**

(1) Without prejudice to the requirements regarding large exposures prescribed under Articles 149 to 155 of this Act, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the Croatian National Bank shall, as the competent authority responsible for the supervision of these credit institutions, exercise general supervision over transactions between the credit institution and the mixed-activity holding company and its subsidiaries.

- (2) The credit institutions referred to in paragraph (1) of this Article shall:
- 1) have in place adequate risk management procedures and internal control systems, including sound reporting systems and accounting procedures, in order to identify, measure, monitor and control intra-group transactions with their parent mixed-activity holding company and its subsidiaries appropriately; and
  - 2) without prejudice to the reporting requirements regarding large exposures prescribed under Article 161 of this Act, notify the Croatian National Bank of any significant intra-group transaction with their parent mixed-activity holding company and its subsidiaries.
- (3) The procedures and significant intra-group transactions referred to in paragraph (2) of this Article shall be subject to overview by the Croatian National Bank.
- (4) Where intra-group transactions are a threat to a credit institution's financial position, the Croatian National Bank shall take appropriate measures.

**Exchange of information for the purposes of supervision on a consolidated basis**  
**Article 298**

- (1) Where a parent undertaking and any of its subsidiaries that are credit institutions have their registered offices in different Member States, the Croatian National Bank shall exchange all relevant information with the competent authorities of other Member States which may allow or aid the exercise of supervision on a consolidated basis.
- (2) Where the Croatian National Bank does not itself exercise supervision on a consolidated basis, it may be invited by the competent authorities of the other Member States responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to the competent authorities of the other Member States.
- (3) The Croatian National Bank shall not be the competent authority responsible for the supervision on an individual basis of financial holding companies, other financial institutions, ancillary services undertakings, mixed-activity holding companies and their subsidiaries other than credit institutions, as well as undertakings not included in supervision on a consolidated basis, in respect of which the information referred to in paragraph (2) of this Article is collected or possessed.

**Cooperation between supervisory authorities where one of the subsidiaries is an insurance undertaking or an undertaking authorised to provide investment services**  
**Article 299**

- (1) Where a credit institution, financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance undertakings or other undertakings authorised to provide investment services, the Croatian National Bank

shall cooperate with the supervisory authorities responsible for the supervision of those undertakings.

(2) In the case referred to in paragraph (1) of this Article, the Croatian National Bank shall exchange with the supervisory authorities any information likely to simplify their task and to allow supervision of the activity and overall financial position of the undertakings they supervise.

(3) Information received in the framework of supervision on a consolidated basis, and in particular any exchange of information between supervisory authorities shall be subject to the duty to protect the confidentiality of information.

### **Powers to carry out on-site examinations** **Article 300**

(1) Where the competent authorities of another Member State wish in specific cases to carry out an on-site examination to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a credit institution which is a subsidiary of a mixed-activity holding company, or subsidiaries of the credit institution or financial holding company, and where such undertakings are credit or financial institutions that are not included in supervision on a consolidated basis and have their registered offices within the territory of the Republic of Croatia, they shall request the Croatian National Bank to have the examination carried out.

(2) The Croatian National Bank may, where this is within its competence under this Act, act on the request of the competent authorities of the other Member State in one of the following ways:

- 1) carry out the examination itself;
- 2) allow the competent authorities of the other Member State who made the request to carry out an on-site examination; or
- 3) appoint a certified auditor or another professionally qualified person authorised by the Governor of the Croatian National Bank to carry out an on-site examination.

(3) Where the competent authorities of the other Member State do not carry out the on-site examination referred to in paragraph (1) of this Article, they may participate in the examination carried out by the Croatian National Bank, a certified auditor or another professionally qualified person authorised by the Governor of the Croatian National Bank.

(4) Where the Croatian National Bank wishes in specific cases to carry out an on-site examination to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a credit institution which is a subsidiary of a mixed-activity holding company, or subsidiaries of the credit institution or financial holding company, and

where such undertakings are credit or financial institutions that are not included in supervision on a consolidated basis and have their registered offices within the territory of another Member State, it may request the competent authorities of the Member State in question to have the examination carried out or it may carry out the examination itself.

### **Imposition of supervisory measures on financial holding companies and mixed-activity holding companies**

#### **Article 301**

(1) Where financial holding companies, mixed-activity holding companies or responsible persons of these undertakings violate regulations or legal acts adopted for the purposes of supervision on a consolidated basis, the Croatian National Bank shall impose supervisory measures.

(2) When imposing the supervisory measures referred to in paragraph (1) of this Article, the Croatian National Bank shall cooperate with the competent authorities of other Member States in cases where the registered offices of financial holding companies or mixed-activity holding companies are in another Member State.

### **Cooperation with the competent authorities of third countries**

#### **Article 302**

(1) The Croatian National Bank may conclude an agreement with one or more competent authorities of third countries for the purposes of exercising supervision on a consolidated basis over the following:

- 1) credit institutions the parent undertakings of which have their registered offices in a third country; or
- 2) credit institutions situated in third countries the parent undertakings of which, whether credit institutions or financial holding companies, have their registered offices in the Republic of Croatia.

(2) The agreement referred to in paragraph (1) of this Article shall seek to ensure the basis for the exchange of information which would be relevant for the purposes of consolidated supervision of credit institutions.

(3) The Croatian National Bank may propose to the European Commission the negotiation of agreements with one or more third countries for the purposes of exercising supervision over credit institutions.

### **Cooperation arrangements with third countries**

#### **Article 303**

(1) Where a credit institution which has its registered office in the Republic of Croatia and the parent undertaking of which is a credit institution or a financial holding

company, the registered office of which is in a third country, is not subject to supervision on a consolidated basis by the Croatian National Bank or the competent authority of another Member State, the Croatian National Bank shall, if responsible for supervision on a consolidated basis, verify whether the subsidiary credit institution which has its registered office in the Republic of Croatia is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in this Act. The Croatian National Bank shall carry out the verification at the request of the parent undertaking or of any of the regulated entities authorised in a Member State, or on its own initiative, and it shall consult the other competent authorities involved in supervision.

(2) While carrying out the verification referred to in paragraph (1) of this Article, the Croatian National Bank shall take into account general guidance of the European Banking Committee as to whether the consolidated supervision arrangements of competent authorities in the third countries in which the registered office of the parent undertaking is situated comply with the principles laid down in this Act. For this purpose, the Croatian National Bank shall consult the European Banking Committee before adopting a final decision.

(3) Where it is established that in a third country there are no consolidated supervision arrangements equivalent to the principles laid down in this Act, the Croatian National Bank shall, if responsible for supervision on a consolidated basis, apply the provisions of this Act as appropriate, or other appropriate supervisory procedures which achieve the objectives of supervision on a consolidated basis of credit institutions, to the credit institution subsidiary which has its registered office in the Republic of Croatia. Those supervisory procedures shall, after consultation with the other competent authorities involved in supervision, be agreed upon by the competent authority which would be responsible for the supervision on a consolidated basis of credit institutions.

(4) The Croatian National Bank may in particular cases require the establishment of a financial holding company which has its registered office in one of the Member States and the carrying out of consolidation in accordance with this Act.

## **XXIV CONSUMER PROTECTION**

### **Consumer Article 304**

For the purposes of the provisions of this Act, 'consumer' means any natural person who is a client of a credit institution.

### **Service contracts Article 305**

(1) A credit institution shall conclude a contract with a consumer on the provision of a particular banking service referred to in Article 4 of this Act, in writing and in the Croatian language, and shall deliver at least one copy to the consumer.

(2) Before concluding the contract referred to in paragraph (1) of this Article, the credit institution shall provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a contract.

(3) Before concluding the contract referred to in paragraph (1) of this Article, the credit institution shall present or disclose to the consumer all the relevant terms and conditions of the contract which clearly indicate the rights and obligations of the contracting parties. On request and free of charge, the credit institution shall provide the consumer with a draft of the contract referred to in paragraph (1) of this Article. This provision shall not apply if the credit institution is at the time of the request unwilling to proceed to the conclusion of the legal arrangement with the consumer.

(4) The contract referred to in paragraph (1) of this Article may be concluded by means of an advanced electronic signature, unless a special law or a regulation adopted under that law explicitly requires that paper documents must be personally signed or that signatures must be authenticated.

### **Disclosure of general operating conditions**

#### **Article 306**

(1) A credit institution shall disclose to consumers its general operating conditions, including information on the conditions for providing services, in the Croatian language and in an appropriate place in its business premises where it provides services to consumers.

(2) In addition to the method of providing information to consumers referred to in paragraph (1) of this Article, a credit institution may provide the same information in other appropriate manners.

(3) A credit institution shall disclose amendments to its general operating conditions in the manner referred to in paragraphs (1) and (2) of this Article at least fifteen days before their entry into force.

(4) The information referred to in paragraph (1) of this Article related to the granting of credits shall include the data on:

- 1) applicable annual nominal rates of regular and default interest;
- 2) the method of calculating interest (proportional or equivalent interest rate);
- 3) the terms and conditions under which regular and default interest may be changed during the period of credit utilisation, i.e. repayment;

- 4) the currency in which the principal amount is denominated or to which the principal amount is linked, and the type of the exchange rate used for the payment and collection of the credit;
- 5) fees and commissions (other than the declared nominal interest) charged by the credit institution to borrowers;
- 6) effective interest rates reflecting the total credit price, calculated in accordance with the regulations of the Croatian National Bank;
- 7) the amount of principal and interest payments (including other costs) for the respective credit amount, repayment periods, the number and amount of instalments;
- 8) the terms and conditions for making a deposit with the credit institution, if this is a prerequisite for the granting of a credit;
- 9) the possibilities and terms and conditions for offsetting credits against the deposits referred to in the preceding item; and
- 10) collateral instruments, and other terms and conditions imposed by the credit institution.

(5) The information referred to in paragraph (1) of this Article related to the acceptance of deposits shall include the data on:

- 1) applicable annual nominal interest rates;
- 2) the method of calculating interest (proportional or equivalent interest rate);
- 3) the currency in which the deposited amount is denominated or to which the deposited amount is linked;
- 4) the terms and conditions under which interest rates may be changed;
- 5) the lowest amount accepted in deposit;
- 6) fees for maintaining the accounts and other similar fees and commissions if they are charged by the credit institution to depositors;
- 7) effective interest rates reflecting the total return on deposit, calculated in accordance with the regulations of the Croatian National Bank; and
- 8) basic information on deposit insurance.

### **Regulation on the content of contracts**

#### **Article 307**

The Croatian National Bank may prescribe:

- 1) a uniform method of calculating and disclosing credit and deposit prices (effective interest rates referred to in Article 306, paragraph (4), item (6) and paragraph (5), item (7) of this Act);
- 2) other mandatory elements of credit and deposit contracts as well as of attachments to these contracts; and
- 3) the content and form of providing the information referred to in Article 305, paragraph (2) of this Act.

### **Consumer notification**

#### **Article 308**

(1) A credit institution shall notify consumers in an agreed upon manner, and on an annual basis at a minimum, of the amount of their credits or deposits.

(2) Where variable interest rates have been contracted, a credit institution shall notify consumers of interest rate changes at least fifteen days before their application. In case of credit contracts, the credit institution shall also provide the consumer with the new amortisation table.

(3) By way of derogation from paragraph (2) of this Article, the credit institution and the consumer may agree in the credit contract that the credit institution shall notify the consumer periodically on the new amortisation table and changes in interest rates if these rates are linked to a reference rate, provided that the new reference rate is made publicly available and that the information concerning the new reference rate is also kept available in the business premises of the credit institution where it provides services to consumers.

### **Consumer complaints**

#### **Article 309**

(1) The Croatian National Bank shall, within its competence for credit institutions, monitor whether credit institutions generally comply with good business practices, their disclosed general operating conditions and the contracts concluded with their clients, as well as the consumer protection provisions of this Act and the provisions of the special law governing consumer protection.

(2) The Croatian National Bank shall not address individual consumer complaints, i.e. complaints from credit institutions' clients.

(3) Where a consumer deems that a credit institution has not complied with the terms and conditions of a contract on the provision of banking or financial services, he/she may file a complaint against the credit institution with the following:

- 1) the responsible organisational unit of the credit institution;
- 2) the organisational unit of the credit institution responsible for addressing consumer complaints;
- 3) the internal audit function of the credit institution;
- 4) a consumer protection association;
- 5) the competent regional office of the State Inspector's Office; or
- 6) other competent authorities.

(4) A credit institution shall entrust at least one of its employees with the task of addressing consumer complaints. A credit institution which has its registered office outside the Republic of Croatia and provides services within the territory of the Republic of Croatia through a branch shall entrust at least one employee of its branch in the Republic of Croatia with the task of addressing complaints from consumers in the Republic of Croatia.

(5) Where a consumer has filed a complaint referred to in paragraph (3) of this Article, he/she may notify the Croatian National Bank. On receipt of the notification of a consumer complaint, the Croatian National Bank shall require that the credit institution in question make a statement on the complaint. The Croatian National Bank shall deliver this statement to the consumer.

(6) In case of breaches or suspected breaches of the provisions of this Act governing consumer protection or the provisions of the Consumer Protection Act, the Croatian National Bank shall be the competent authority responsible for carrying out an on-site examination of the respective credit institution, a branch of a credit institution of a Member State which provides services within the territory of the Republic of Croatia, a credit institution of a Member State which directly provides services within the territory of the Republic of Croatia or a branch of a third-country credit institution which provides services within the territory of the Republic of Croatia.

### **Application of a special law** **Article 310**

(1) In addition to the provisions of Articles 304 to 309 of this Act, the rights of credit institutions' clients shall be protected by special laws governing consumer protection, while observing the provisions of this Act related to the obligation of banking secrecy.

(2) Unless otherwise prescribed in this Act, the provisions of the Consumer Protection Act relating to consumer credit shall apply *mutatis mutandis* to contracts on credits granted by credit institutions.

## **XXV SAVINGS BANKS**

### **Savings bank** **Article 311**

(1) A savings bank shall be a credit institution authorised by the Croatian National Bank as a savings bank and established as a joint stock company which has its registered office in the Republic of Croatia.

(2) The firm name of a savings bank must contain the words 'savings bank'.

(3) The words 'savings bank' or derivatives of these words, if contained in the firm name, may be entered in the register of companies and used in legal transactions only by a legal person authorised by the Croatian National Bank as a savings bank.

(4) By way of derogation from paragraph (3) of this Article, the words 'savings bank' in the firm name may be used in legal transactions by a savings bank that has been authorised as a bank in accordance with Article 315 of this Act.

**Application of other regulations**  
**Article 312**

With the exception of the provisions of Article 32 and Articles 72 to 80 of this Act, the provisions of this Act, regulations adopted under this Act, and of other regulations governing the operation of credit institutions shall apply *mutatis mutandis* to savings banks.

**Savings bank activities**  
**Article 313**

- (1) Savings banks may provide the banking services referred to in Article 4 of this Act.
- (2) In addition to the banking services referred to in paragraph (1) of this Article, savings banks may provide the following financial services subject to authorisation by the Croatian National Bank:
- 1) issue guarantees or other commitments;
  - 2) grant credits, including consumer and mortgage credits;
  - 3) trade for own account in:
    - money market instruments and other transferable securities,
    - foreign exchange, including currency exchange transactions;
  - 4) money transmission services in the country in accordance with special regulations;
  - 5) credit reference services, such as collection, analysis and provision of information on the creditworthiness of legal and natural persons that conduct their business independently;
  - 6) activities related to the sale of insurance policies in accordance with the regulations governing insurance;
  - 7) issuing and administering means of payment;
  - 8) safe custody services;
  - 9) money broking; and
  - 10) other services similar to the services referred to in items (1) to (9) of this paragraph and listed in the savings bank's authorisation.
- (3) Savings banks may neither operate nor establish branches and representative offices outside the Republic of Croatia.

**Preferential shares of savings banks**  
**Article 314**

Savings banks may not issue preferential shares.

**Authorisations to savings banks intending to operate as banks**  
**Article 315**

(1) A savings bank intending to operate as a bank shall obtain authorisation from the Croatian National Bank to operate as a bank.

(2) The provisions of this Act governing the authorisation procedure shall apply *mutatis mutandis* to the authorisation procedure regarding a savings bank intending to operate as a bank.

(3) When deciding whether to grant the authorisation referred to in paragraph (1) of this Article, the Croatian National Bank may require the chairperson and members of the management board to make a presentation detailing how they propose to direct the business of the bank.

(4) The Croatian National Bank shall decide on the authorisation referred to in paragraph (1) of this Article on the basis of:

- 1) documents delivered together with the application for authorisation;
- 2) the presentation referred to in paragraph (3) of this Article; and
- 3) other data and information available to it.

(5) The authorisation to operate as a savings bank shall expire on the date of issue of the authorisation referred to in paragraph (1) of this Article.

## **XXVI HOUSING SAVINGS BANKS**

### **Housing savings banks**

#### **Article 316**

The provisions of this Act shall apply to housing savings banks established under the provisions of the Act on Housing Savings and State Incentive to Housing Savings, unless otherwise prescribed in other laws.

### **Protection of the name**

#### **Article 317**

The words 'housing savings bank' or derivatives of these words, if contained in the firm name, may be entered in the register of companies or used in legal transactions only by the housing savings banks referred to in Article 316 of this Act, unless otherwise provided for in another law.

## **XXVII ASSOCIATION OF CREDIT INSTITUTIONS**

### **Association of credit institutions**

#### **Article 318**

(1) Credit institutions may join an association of credit institutions established as an economic interest group or other form of association of economic entities in accordance with a special law.

(2) In addition to the tasks laid down in its Articles of Association, an association of credit institutions may:

- 1) organise the exchange of information on creditworthiness for the purpose of protection against credit risk; and
- 2) provide professional training for employees of credit institutions and issue certificates of completion of the professional training.

(3) Credit institutions may not conclude any written or oral agreement with other credit institutions or their associations that would restrict free market competition.

(4) For the purposes of implementing paragraph (3) of this Article, at the request of the Croatian National Bank, an association of credit institutions shall deliver to the Croatian National Bank its Articles of Association as well as all agreements, contracts and other general bylaws.

#### **Credit register** **Article 319**

(1) The Croatian National Bank may collect information from persons who are authorised under this Act to provide banking services within the territory of the Republic of Croatia and organise the exchange of information for the purpose of protection against credit risk.

(2) The Croatian National Bank may prescribe the methods of and the conditions for collecting information for the purpose of protection against credit risk.

### **XXVIII DECISION-MAKING METHODS AND PROCEDURES OF THE CROATIAN NATIONAL BANK**

#### **XXVIII.1 GENERAL PROVISIONS**

##### **Application of procedural provisions** **Article 320**

(1) Unless otherwise provided for in this Act, the provisions of the General Administrative Procedure Act shall apply to the decision-making procedures of the Croatian National Bank.

(2) It shall not be possible to require restitution in an administrative procedure carried out by the Croatian National Bank.

## **Parties to the proceedings**

### **Article 321**

Parties to the proceedings with the Croatian National Bank shall be:

- 1) a credit institution providing services within the territory of the Republic of Croatia in accordance with the provisions of this Act and the credit institution's management board or a member of its management board whose responsibility for specific areas of operation has been established by a general bylaw of the credit institution;
- 2) a legal person having close links with a credit institution providing services within the territory of the Republic of Croatia in accordance with the provisions of this Act and the responsible person of the legal person in question;
- 3) a natural or legal person and the responsible person of the legal person in question to which a credit institution providing services within the territory of the Republic of Croatia in accordance with the provisions of this Act has transferred a significant part of its business activities;
- 4) a natural or legal person and the responsible person of the legal person in question who is a holder of a qualifying holding in a credit institution providing services within the territory of the Republic of Croatia in accordance with the provisions of this Act; or
- 5) applicants for authorisations or approvals which are issued by the Croatian National Bank in accordance with the provisions of this Act.

## **Decision-making**

### **Article 322**

In its procedures, the Croatian National Bank shall decide without an oral discussion.

## **Decision**

### **Article 323**

(1) Decisions adopted by the Croatian National Bank on matters within its competence must be written and explained. Such decisions shall be final in an administrative procedure. Administrative proceedings may be initiated against Croatian National Bank decisions.

(2) The provisions of the General Administrative Procedure Act governing the revocation, cancellation, extraordinary cancellation and annulment of decisions pursuant to the right of supervision shall not apply to the decisions referred to in paragraph (1) of this Article.

(3) Where it deems it necessary, the Croatian National Bank may adopt a decision with a condition, a decision with an order or a decision with reservation of the right to repeal.

## **Amendments to decisions**

### **Article 324**

(1) In the course of supervision of a credit institution, the Croatian National Bank may amend its decision at the request of the party concerned.

(2) At the request of the party concerned, the Croatian National Bank may amend its decision in cases where, after the issue of the authorisation, new circumstances have arisen which would or could influence the operation of the credit institution in question.

(3) In the cases referred to in paragraphs (1) and (2) of this Article, the Croatian National Bank shall also take into account all facts and circumstances arising after the adoption of the decision referred to in paragraph (1) of this Article or after the issue of the authorisation.

### **Conclusion Article 325**

(1) The Croatian National Bank shall adopt conclusions on matters relating to its procedures. These conclusions shall address secondary issues related to the implementation of procedures.

(2) Conclusions may not be directly appealed. Instead, a conclusion may be challenged in the course of administrative proceedings against a decision.

### **Liability for damage Article 326**

The Croatian National Bank, employees of the Croatian National Bank, members of the Council of the Croatian National Bank and persons authorised by the Croatian National Bank shall not be liable for damage that may arise in the course of the performance of their duties under this Act, the Act on the Croatian National Bank or regulations adopted under these acts, unless it is proven that they acted or failed to act intentionally or as a result of gross negligence.

## **XXVIII.2 AUTHORISATION PROCEDURE**

### **Initiation of authorisation procedures Article 327**

(1) An authorisation procedure shall be initiated at the request of the party concerned.

(2) By way of derogation from paragraph (1) of this Article, the Croatian National Bank shall initiate an authorisation procedure acting *ex officio* or at the request of another competent authority where so provided for in this Act.

### **Content of applications for authorisation Article 328**

(1) In its deliberations regarding an application for authorisation, the Croatian National Bank shall be the competent authority responsible to establish whether:

- 1) the application includes all the information required in accordance with this Act and regulations adopted under this Act;
- 2) all required documents prescribed in this Act and regulations adopted under this Act have been enclosed with the application;
- 3) evidence of payment of the fee has been enclosed with the application where such payment is prescribed by the Croatian National Bank in subordinate legislation; and
- 4) all procedural prerequisites for the initiation of the procedure following the submission of the application have been met.

(2) Where an application is incomplete or deficient in ways that may be eliminated, the Croatian National Bank shall invite the applicant to complete the application or eliminate its deficiencies within a specified time limit which may be neither shorter than eight nor longer than fifteen days. Where the applicant fails to complete the application or eliminate its deficiencies within the specified time limit, the Croatian National Bank shall adopt a conclusion to refuse the application.

(3) Where all the procedural prerequisites for a decision on an application have not been met or where the application contains deficiencies which cannot be eliminated, the Croatian National Bank shall adopt a conclusion to refuse the application.

(4) In the case referred to in paragraph (2) of this Article, the Croatian National Bank shall invite the applicant to complete the application or eliminate its deficiencies at the latest within one month of receipt of the application, or within two months in the case of applications for authorisation, merger, acquisition or division of credit institutions.

#### **Time limits** **Article 329**

(1) Within six months of receipt of a complete application, the Croatian National Bank must decide on:

- 1) an application for authorisation and all other applications referred to in Article 64 of this Act;
- 2) an application for authorisation for acquisition, merger or division of credit institutions; and
- 3) an application for permission to use internal risk management models in accordance with this Act.

(2) The time limit for the adoption of the decisions and notifications on the decisions referred to in paragraph (1) of this Article may not be longer than 12 months from the date of receipt of the application.

(3) Except in the cases referred to in Article 36 of this Act, the Croatian National Bank shall decide on all other applications for authorisations within three months of receipt of a complete application or within six months if it assesses that additional data should be collected.

(4) A credit institution submitting an application for permission to use internal risk management models shall notify the Croatian National Bank of its intention to submit such an application no later than six months before submitting the application.

(5) A credit institution whose application for permission to use an internal risk management model has been refused may not submit a new application for permission to use an individual model for the same purpose within one year from the date of issue of the decision to refuse the application.

### **Enforcement of decisions**

#### **Article 330**

Decisions of the Croatian National Bank shall be enforceable at the moment of their delivery to the parties to the proceedings, unless otherwise prescribed in this Act.

## **XXIX REORGANISATION MEASURES, WINDING-UP AND BANKRUPTCY PROCEEDINGS WITH INTERNATIONAL IMPLICATIONS**

### **XXIX.1 GENERAL PROVISIONS**

#### **General provision**

#### **Article 331**

The provisions of the Bankruptcy Act governing international bankruptcy proceedings shall apply *mutatis mutandis* to bankruptcy proceedings against a credit institution or its branch, unless otherwise provided for in this Act.

#### **Scope of application**

#### **Article 332**

The provisions of this Title shall apply to credit institutions with registered offices in the Republic of Croatia that have branches in another Member State, credit institutions of other Member States, and branches of a third-country credit institution only where that institution has branches in at least two Member States.

#### **Definitions**

#### **Article 333**

The terms used shall mean the following for the purposes of this Title and in accordance with the law applicable in each Member State:

- 'administrator' means any person or body appointed by the administrative, public or judicial authorities whose task is to administer reorganisation measures;
- 'administrative authorities, agencies and other public or judicial authorities' means the administrative authorities, agencies and other public or judicial authorities of the Member States as are competent for the purposes of reorganisation measures, winding-up or bankruptcy proceedings;
- 'liquidator' means any person or body appointed by the administrative, public or judicial authorities whose task is to administer winding-up proceedings;
- 'winding-up proceedings' means collective proceedings opened and monitored by the administrative, public or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;
- 'trustee in bankruptcy' means any person or body appointed by the administrative, public or judicial authorities or creditors whose task is to administer and liquidate the bankruptcy estate, and monitor the business activities of a debtor in bankruptcy;
- 'bankruptcy proceedings' means collective proceedings opened and monitored by the judicial or other authorities of a Member State, after establishing the existence of the grounds for bankruptcy, which result in seizure of all or a part of the debtor's property and the appointment of a trustee in bankruptcy with the aim of collective settlement of claims of the debtor's creditors under the supervision of those authorities, and regulating the legal relationship between the debtor and its creditors, and in particular to restore its viability;
- 'reorganisation measures' means measures which are intended to preserve or restore the financial soundness of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims.

## **XXIX.2 REORGANISATION MEASURES**

### **XXIX.2.1 Credit institutions of other Member States**

#### **Legal effects of a decision on reorganisation measures**

##### **Article 334**

Reorganisation measures imposed by the administrative authorities, agencies and other public or judicial authorities on a credit institution which has its registered office in another Member State and has branches within the territory of the Republic of Croatia shall be governed by the law of the home Member State and shall have full legal effects within the territory of the Republic of Croatia on third parties once they become effective in the home Member State.

## **XXIX.3 WINDING-UP AND BANKRUPTCY PROCEEDINGS**

**XXIX.3.1 Winding-up and bankruptcy proceedings against credit institutions with registered offices in the Republic of Croatia and credit institutions of other Member States**

**International jurisdiction to open winding-up or bankruptcy proceedings  
Article 335**

When the Croatian National Bank adopts a decision to initiate compulsory winding-up proceedings or when the competent commercial court in the Republic of Croatia adopts a decision to open bankruptcy proceedings against a credit institution which has a branch in another Member State, these proceedings shall also be carried out for branches of credit institutions operating within the territory of the other Member State and shall have legal effects on third parties.

**Special bankruptcy proceedings  
Article 336**

The special bankruptcy proceedings referred to in Article 302 of the Bankruptcy Act shall not be permitted for branches of credit institutions of other Member States operating in the Republic of Croatia.

**Recognition of a decision to open winding-up or bankruptcy proceedings  
Article 337**

A decision to open winding-up or bankruptcy proceedings against a credit institution of another Member State, which has been adopted by the administrative, public or judicial authority of the home Member State, shall be recognised in the Republic of Croatia, without any further formalities, and shall have legal effects in the Republic of Croatia once it becomes effective in the home Member State.

**Notification to other competent authorities  
Article 338**

(1) Where the Republic of Croatia is the home Member State in which a decision to open compulsory winding-up proceedings against a credit institution which has branches in another Member State is adopted, the Croatian National Bank shall without delay notify the competent supervisory authority of the host Member State accordingly, including the practical legal effects which such proceedings may have, if possible before the proceedings open or otherwise immediately thereafter.

(2) Where the competent commercial court in the Republic of Croatia as the home Member State adopts a decision to open bankruptcy proceedings against a credit institution which has branches in another Member State, the competent commercial

court shall without delay notify the Croatian National Bank accordingly, including the practical legal effects which such proceedings may have. The Croatian National Bank shall deliver that notification to the competent supervisory authority of the host Member State without delay, if possible before the proceedings open or otherwise immediately thereafter.

**Publication**  
**Article 339**

Where the Republic of Croatia is the home Member State in which a decision to open winding-up or bankruptcy proceedings against a credit institution which has branches in another Member State is adopted, the liquidator or trustee in bankruptcy shall publish an extract from the decision to open winding-up or bankruptcy proceedings in the Official Journal of the European Communities and at least two national newspapers in each of the host Member States, and in the official language or languages of the host Member States concerned.

**Notification to known creditors**  
**Article 340**

(1) Where the Republic of Croatia is the home Member State in which a decision to open winding-up or bankruptcy proceedings against a credit institution which has branches in another Member State is adopted, the liquidator or the competent commercial court shall without delay individually notify known creditors who have their domiciles, normal places of residence or registered offices in other Member States.

(2) The notification referred to in paragraph (1) of this Article shall in particular deal with time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims, the content of the lodgement of claims, documents to be enclosed and the other measures laid down. Such a notification shall also clearly indicate whether creditors whose claims are preferential or secured in re (creditors with rights based on reservation of title and creditors entitled to separate satisfaction) need lodge their claims.

(3) The notification referred to in paragraph (2) of this Article shall be provided in the official language or languages of a Member State in which a creditor has his domicile, normal place of residence or registered office. For that purpose a form shall be used bearing, in addition to the information referred to in paragraph (2) of this Article, in all the official languages of the European Economic Area, the heading 'Invitation to lodge a claim. Time limits to be observed'.

(4) The central government administration body responsible for judicial matters shall prescribe the form of the notification referred to in paragraph (3) of this Article within 60 days of the entry into force of this Act.

### **Foreign creditors' right to lodge claims**

#### **Article 341**

(1) Where the Republic of Croatia is the home Member State in which winding-up or bankruptcy proceedings have been opened against a credit institution, any creditor who has his domicile, normal place of residence or registered office in another Member State, including Member States' public authorities, shall have the right to lodge claims in the said winding-up or bankruptcy proceedings carried out in the Republic of Croatia.

(2) The claims of the creditors referred to in paragraph (1) of this Article shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence or registered offices in the Republic of Croatia.

(3) The creditors referred to in paragraph (1) of this Article shall lodge their claims in accordance with the instructions provided in the notification referred to in Article 340, paragraph (2) of this Act.

(4) A creditor may lodge his claim in the official language or one of the official languages of a Member State in which he has his domicile, normal place of residence or registered office provided that the lodgement of his claim or the submission of observations on his claim shall bear the heading 'Lodgement of claim and submission of observations relating to claims' in the Croatian language. The liquidator or trustee in bankruptcy may require creditors to submit a certified translation in the Croatian language of the lodgement of their claims and of observations relating to claims.

### **Regular notification to creditors**

#### **Article 342**

Liquidators in winding-up proceedings or creditors' committees in bankruptcy proceedings against credit institutions shall notify creditors regularly and in writing, particularly with regard to progress in the winding-up or bankruptcy proceedings.

### **Law applicable**

#### **Article 343**

(1) Winding-up or bankruptcy proceedings against a credit institution of another Member State shall be carried out in accordance with the regulations applicable in its home Member State, unless otherwise provided for in this Act.

(2) The law of the home Member State shall determine in particular:

- 1) the goods included in the estate and the treatment of goods acquired by the credit institution after the opening of winding-up or bankruptcy proceedings;
- 2) the respective powers of the credit institution, the liquidator or trustee in bankruptcy;
- 3) the conditions under which set-offs may be invoked;
- 4) the effects of the opening of winding-up or bankruptcy proceedings on current contracts to which the credit institution is party;
- 5) the legal effects of the opening of winding-up or bankruptcy proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 358 of this Act;
- 6) the claims which are to be lodged against the credit institution undergoing winding-up or bankruptcy proceedings and the treatment of claims arising after the opening of such proceedings;
- 7) the rules governing the lodging, verification and admission of claims;
- 8) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of winding-up or bankruptcy proceedings by virtue of a right in re or through a set-off;
- 9) the conditions for, and the legal effects of, the closure of winding-up or bankruptcy proceedings, in particular by composition;
- 10) creditors' rights after the closure of winding-up or bankruptcy proceedings;
- 11) who is to bear the costs and expenses incurred in the winding-up or bankruptcy proceedings; and
- 12) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

### **Honouring of obligations for the benefit of a credit institution**

#### **Article 344**

(1) Where an obligation has been honoured for the benefit of a credit institution which has a branch in another Member State and which is the subject of winding-up or bankruptcy proceedings opened in another Member State, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.

(2) Where such an obligation is honoured before the publication provided for in Article 339 of this Act has been effected, the person referred to in paragraph (1) of this Article shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up or bankruptcy proceedings.

(3) Where the obligation is honoured after the publication provided for in Article 339 of this Act has been effected, the person referred to in paragraph (1) of this Article shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of winding-up or bankruptcy proceedings.

## **Activities in winding-up or bankruptcy proceedings**

### **Article 345**

Where winding-up proceedings have been initiated or bankruptcy proceedings have been opened against a credit institution of a Member State which has a branch in the Republic of Croatia and where its authorisation has been withdrawn, such a decision shall not prevent certain activities of the branch of that institution from continuing insofar as is necessary or appropriate for the purposes of winding-up or bankruptcy proceedings.

## **Effects of activities in the course of the voluntary winding-up**

### **Article 346**

Where the regulations applicable in the home Member State provide that the voluntary winding-up of a credit institution of that Member State shall not preclude the adoption of a reorganisation measure or the opening of bankruptcy proceedings concerning that credit institution, the adoption of reorganisation measures or the opening of bankruptcy proceedings shall have the same legal effect on a branch of that credit institution within the territory of the Republic of Croatia.

## **XXIX.3.2 Winding-up and bankruptcy proceedings against branches of third-country credit institutions**

### **Branches of third-country credit institutions**

#### **Article 347**

(1) Where the Croatian National Bank intends to adopt a decision to initiate compulsory winding-up proceedings or where a commercial court in the Republic of Croatia intends to adopt a decision to open bankruptcy proceedings against a branch of a third-country credit institution operating in the Republic of Croatia, it shall without delay notify accordingly the competent supervisory authority of the home country in question, including the practical legal effects which such decision may have.

(2) Where a decision to open bankruptcy proceedings against a branch of a third-country credit institution which has branches in another Member State is adopted in the Republic of Croatia, the competent commercial court in the Republic of Croatia shall without delay notify the Croatian National Bank accordingly, including the practical legal effects which such decision may have. The Croatian National Bank shall without delay deliver that notification to the competent supervisory authority of the home country in question and the competent supervisory authority of the other host Member State, if possible before the proceedings open or otherwise immediately thereafter.

(3) In the case referred to in paragraph (1) of this Article, the Croatian National Bank, the competent commercial court, liquidators or trustees in bankruptcy shall endeavour

to cooperate and coordinate their actions with the other competent supervisory authorities.

#### **XXIX.4 Provisions common to reorganisation measures and winding-up or bankruptcy proceedings concerning credit institutions of the Member States**

##### **Legal effects on certain contracts and rights**

###### **Article 348**

The legal effects of a reorganisation measure or the opening of winding-up or bankruptcy proceedings on:

- 1) employment contracts and relationships shall be governed solely by the law of the home Member State applicable to the employment contract;
- 2) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable; and
- 3) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

##### **Third parties' rights in re**

###### **Article 349**

(1) The adoption of reorganisation measures or the opening of winding-up or bankruptcy proceedings shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the credit institution established in the Republic of Croatia or another Member State which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of winding-up or bankruptcy proceedings.

(2) The rights referred to in paragraph (1) of this Article shall in particular mean:

- 1) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- 2) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- 3) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled; and
- 4) a right in re to the beneficial use of assets.

(3) The right, recorded in a public register and enforceable against third parties, under which a right in re within the meaning of paragraph (1) of this Article may be obtained, shall be considered a right in re.

(4) The provision of paragraph (1) of this Article shall not preclude the actions for voidness, voidability or unenforceability of legal acts, where such actions are permitted by the law of the home Member State.

### **Reservation of title** **Article 350**

(1) The adoption of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State and purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the adoption of such measures or opening of winding-up or bankruptcy proceedings the asset is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened.

(2) The adoption of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State and selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the adoption of such measures or the opening of winding-up or bankruptcy proceedings the asset sold is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened.

(3) The provision of paragraph (1) of this Article shall not preclude the actions for voidness, voidability or unenforceability of legal acts, where such actions are permitted by the law of the home Member State.

### **Set-off** **Article 351**

(1) The adoption of reorganisation measures or the opening of winding-up or bankruptcy proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution established in the Republic of Croatia or another Member State, where such a set-off is permitted by the law applicable to the credit institution's claim.

(2) The provision of paragraph (1) of this Article shall not preclude the actions for voidness, voidability or unenforceability of legal acts, where such actions are permitted by the law of the home Member State.

## **Law applicable to proprietary rights and other rights in instruments**

### **Article 352**

(1) In the course of the implementation of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State, the enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a public register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the public register, account, or centralised deposit system in which those rights are recorded is held or located.

(2) By way of derogation from paragraph (1) of this Article, in the course of the implementation of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State, securities repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

(3) By way of derogation from paragraph (1) of this Article, in the course of the implementation of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.

## **Set-off and netting agreements**

### **Article 353**

In the course of the implementation of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State, set-off and netting agreements shall be governed solely by the law of the contract which governs such agreements.

## **Administrators, liquidators and trustees in bankruptcy**

### **Article 354**

(1) The appointment of an administrator, liquidator, or trustee in bankruptcy to a credit institution established in another Member State within the territory of another Member State shall be evidenced in the Republic of Croatia by a certified copy of the original decision appointing him or by any other certificate issued by the administrative, public or judicial authority of the home Member State. A translation into the Croatian language of that decision or certificate may be required in the Republic of Croatia. No legalisation or other similar formality shall be required.

(2) Administrators, liquidators, or trustees in bankruptcy appointed within the territory of another Member State shall be entitled to exercise within the territory of the Republic of Croatia all the powers which they are entitled to exercise within the territory of the home Member State. They may also appoint persons to assist or, where appropriate, represent them in the course of the proceedings.

(3) In exercising their powers, the persons referred to in paragraphs (1) and (2) of this Article, shall comply with the laws and regulations of the Republic of Croatia, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

### **Registration in a public register**

#### **Article 355**

(1) The administrator, liquidator or trustee in bankruptcy, or any administrative or judicial authority of the home Member State may request that a reorganisation measure or the decision to open winding-up or bankruptcy proceedings be registered in the Republic of Croatia in the register of companies, the crafts register, the land register, the ship register, the register of ships under construction, the register of aircrafts or the register of intellectual property rights.

(2) Where the Republic of Croatia is the home Member State in which winding-up or bankruptcy proceedings have been opened, the liquidator or trustee in bankruptcy shall request that the decision to open winding-up or bankruptcy proceedings be registered in each of the host Member States.

(3) The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

### **Acts detrimental to the creditors as a whole**

#### **Article 356**

Where winding-up or bankruptcy proceedings have been opened against a credit institution which has its registered office in the Republic of Croatia, the law of the Republic of Croatia relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole shall not apply where the beneficiary of these acts provides proof that:

- 1) the act detrimental to the creditors as a whole is subject to the law of a Member State other than the Republic of Croatia; and
- 2) that law does not allow any means of challenging that act in the case in point.

### **Protection of third parties**

#### **Article 357**

(1) Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up or bankruptcy proceedings, a credit institution established in the Republic of Croatia or another Member State disposes, for consideration, of an immovable asset, the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated.

(2) Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up or bankruptcy proceedings, a credit institution established in the Republic of Croatia or another Member State disposes, for consideration, of a ship or an aircraft subject to registration in a public register, or instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a public register, an account or a centralised deposit system held or located in the Member State in question, the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated or under the authority of which that public register, account or deposit system is kept.

### **Lawsuits pending**

#### **Article 358**

The legal effects of reorganisation measures, winding-up or bankruptcy proceedings on a pending lawsuit concerning an asset or a right which has been included in the estate shall be governed solely by the law of the Member State in which the lawsuit is pending.

### **Duty to protect the confidentiality of information**

#### **Article 359**

All persons required to divulge or receive information in connection with the notification or consultation procedures laid down in Article 347 of this Act shall be bound by the duty to protect the confidentiality of information in accordance with the provisions of this Act on the exchange of information and protection of confidential information, with the exception of any judicial authorities.

## **XXX PENAL PROVISIONS**

### **Serious violations by credit institutions**

#### **Article 360**

(1) A credit institution shall be fined between HRK 500,000.00 and HRK 2,000,000.00:

- 1) if it grants credits or issues guarantees or other commitments contrary to the provisions of Article 31 of this Act;
- 2) if it acquires holdings in another legal person contrary to the provisions of Article 33 of this Act;

- 3) if it breaches the provisions on the management board referred to in Article 43 or appoints a management board member without the prior approval referred to in Article 46 of this Act;
- 4) if it carries out activities contrary to Article 58 of this Act;
- 5) if it effects any of the changes in status referred to in Article 61 of this Act without authorisation by the Croatian National Bank;
- 6) if it establishes a branch in another Member State without notifying the Croatian National Bank in advance (Article 73);
- 7) if, as a parent credit institution, it fails to notify the Croatian National Bank in advance that its subsidiary financial institution established a branch in another Member State (Article 74);
- 8) if it begins to provide services through a branch situated in another Member State contrary to Article 75 of this Act;
- 9) if it begins to directly provide banking services or recognised financial services without notifying the Croatian National Bank in advance of its intention (Article 78, paragraph (1));
- 10) if, as a parent credit institution, it fails to notify the Croatian National Bank in advance that its subsidiary financial institution began to directly provide recognised financial services (Article 78, paragraph (2));
- 11) if it establishes a branch in a third country without prior authorisation by the Croatian National Bank (Article 79);
- 12) if its own funds fall below the minimum level referred to in Article 110, paragraph (3) of this Act;
- 13) if it fails to have in place, implement and regularly review strategies and procedures to assess the adequacy of internal capital in accordance with Article 111 of this Act;
- 14) if it fails to establish and implement governance arrangements in accordance with Article 113 of this Act;
- 15) if it fails to establish and apply consistently over time sound procedures for adequate internal control systems in accordance with Article 114 of this Act;
- 16) if it fails to manage credit risk in the manner prescribed in Articles 115, 116, 117 and 118 of this Act;
- 17) if it fails to manage market risk in the manner prescribed in Articles 119 and 120 of this Act;
- 18) if it fails to manage liquidity risk in the manner prescribed in Article 121 of this Act;
- 19) if it fails to manage operational risk in the manner prescribed in Article 122 of this Act;
- 20) if it fails to manage concentration risk in the manner prescribed in Article 123 of this Act;
- 21) if it fails to manage other risks in the manner prescribed in Article 124 of this Act;
- 22) if it uses internal models or approaches without or contrary to the permission of the Croatian National Bank (Articles 128 and 135);
- 23) if its capital adequacy ratio is lower than the ratio prescribed in Article 130 of this Act;
- 24) if its own funds are not at all times sufficient to cover the capital requirements referred to in Article 131 of this Act;

- 25) if it fails to calculate risk-weighted exposure amounts for credit risk in accordance with Articles 132 to 136 of this Act;
- 26) if it fails to calculate the capital requirement for market risks in accordance with Articles 137 to 141 of this Act;
- 27) if it fails to calculate the capital requirement for operational risk in accordance with Articles 142 to 147 of this Act or to notify the Croatian National Bank of the facts referred to in Article 148 of this Act;
- 28) if it acts contrary to the provisions of Articles 150 and 151 of this Act on the permitted exposure limits;
- 29) if it concludes a legal arrangement without supervisory board approval contrary to Article 154 of this Act;
- 30) if it fails to notify the Croatian National Bank on exceeding the maximum permitted exposure limits in the manner prescribed in Article 155 of this Act;
- 31) if it acts contrary to the provisions on the limits on holdings referred to in Article 157 of this Act;
- 32) if it acquires a holding without the prior approval of the Croatian National Bank referred to in Article 160 of this Act;
- 33) if it acts contrary to the regulations adopted under Article 161 of this Act;
- 34) if it fails to notify the Croatian National Bank of the facts and circumstances referred to in Article 162 of this Act;
- 35) if it fails to deliver to the Croatian National Bank the reports and information referred to in Article 163 of this Act;
- 36) if it fails to insure deposits with the competent institution in accordance with Article 167 of this Act;
- 37) if it fails to deliver to the Croatian National Bank its statements and reports or if it fails to publish such statements and reports in accordance with the provisions of Article 175 of this Act;
- 38) if it fails to establish internal control systems in accordance with Article 180, paragraph (1) and Articles 181 and 182 of this Act or acts contrary to the regulations adopted under Article 180, paragraph (2) of this Act;
- 39) if it fails to organise an internal audit function in the manner prescribed in Articles 183 to 186 of this Act;
- 40) if its internal audit function fails to notify the management and supervisory board, and the Croatian National Bank in accordance with the provisions of Article 189 of this Act;
- 41) if it fails to ensure the audit of the financial statements referred to in Article 190, paragraph (1) of this Act;
- 42) if it fails to enable authorised persons to carry out on-site examinations in the manner and under conditions referred to in Articles 204, 206 and 207 of this Act;
- 43) if it fails to act in accordance with a decision of the Croatian National Bank; or
- 44) if, within the period referred to in Article 369, paragraph (4) of this Act during which it is required to adjust to specific provisions of this Act, it fails to act in accordance with the provisions of the Articles referred to in Article 373, paragraph (1) of this Act.

(2) A responsible person of the credit institution's management board shall be fined between HRK 25,000.00 and HRK 100,000.00 for any of the violations referred to in paragraph (1) of this Article.

(3) A savings bank shall be fined between HRK 100,000.00 and HRK 500,000.00 for any of the violations referred to in paragraph (1) of this Article.

(4) A responsible person of the savings bank's management board shall be fined between HRK 10,000.00 and HRK 30,000.00 for any of the violations referred to in paragraph (1) of this Article.

(5) A housing savings bank shall be fined between HRK 250,000.00 and HRK 1,000,000.00 for any of the violations referred to in paragraph (1) of this Article.

(6) A responsible person of the housing savings bank's management board shall be fined between HRK 10,000.00 and HRK 50,000.00 for any of the violations referred to in paragraph (1) of this Article.

#### **Minor violations by credit institutions** **Article 361**

(1) A credit institution shall be fined between HRK 50,000.00 and HRK 500,000.00:

- 1) if its preferential shares exceed the limit referred to in Article 32 of this Act;
- 2) if it breaches the provisions on the employment status of management board members referred to in Article 44 of this Act;
- 3) if it fails to notify the Croatian National Bank and the competent authority of the host Member State within a month of changes in the operation of its branch situated in a Member State (Article 76);
- 4) if it establishes a representative office outside the Republic of Croatia without notifying the Croatian National Bank (Article 80);
- 5) if in the course of outsourcing it acts contrary to Articles 164 to 166 of this Act;
- 6) if it keeps business books, prepares, checks and stores bookkeeping documents, evaluates bookkeeping entries, follows the chart of accounts or prepares financial statements contrary to the provisions of Articles 171 to 173 of this Act or contrary to the regulations adopted under Article 174 of this Act;
- 7) if it fails to disclose or in its public disclosure fails to act in accordance with Articles 176 to 178 of this Act, or if it acts contrary to the regulations adopted under Article 178, paragraph (3) of this Act;
- 8) if it fails to provide an explanation in writing of its decision on the rating at the request of a legal person in accordance with Article 179 of this Act;
- 9) if it fails to adopt an annual internal audit work plan or if such plan is prepared contrary to the provisions of Article 187 of this Act;
- 10) if its internal audit function fails to prepare internal audit reports or if such reports are not prepared or delivered in accordance with the provisions of Article 188 of this Act;

- 11) if it fails to deliver to the Croatian National Bank its decision to appoint an audit firm in accordance with Article 191, paragraph (2) of this Act;
- 12) if it fails to notify and explain to the Croatian National Bank the termination of a contract with an audit firm in accordance with Article 193, paragraph (1) of this Act;
- 13) if it acts contrary to the regulations adopted under Article 197 of this Act;
- 14) if it fails to meet its obligations referred to in Article 297, paragraph (2) of this Act;
- 15) if it acts contrary to the provisions on service contracts referred to in Article 305 of this Act;
- 16) if it acts contrary to the regulations adopted under Article 307 of this Act;
- 17) if it fails to notify consumers in accordance with the provisions of Article 308 of this Act;
- 18) if it fails to entrust at least one of its employees with the task of addressing consumer complaints (Article 309, paragraph (4)); or
- 19) if it fails to disclose information on a deposit insurance scheme in the manner prescribed in Article 306 of this Act.

(2) A responsible person of the credit institution's management board shall be fined between HRK 5,000.00 and HRK 20,000.00 for any of the violations referred to in paragraph (1) of this Article.

#### **Violations by savings banks Article 362**

- (1) A savings bank shall be fined between HRK 100,000.00 and HRK 500,000.00:
- 1) if the words 'savings bank' are not contained in its firm name (Article 311, paragraph (2));
  - 2) if it carries out activities contrary to the provisions of Article 313, paragraphs (1) and (2);
  - 3) if it establishes a branch or representative office abroad (Article 313, paragraph (3)); or
  - 4) if it has preferential shares in its initial capital contrary to Article 314 of this Act.

(2) A responsible person of the savings bank's management board shall be fined between HRK 5,000.00 and HRK 20,000.00 for any of the violations referred to in paragraph (1) of this Article.

#### **Other violations by the management and supervisory board Article 363**

- (1) Members of a credit institution's management board shall be fined between HRK 5,000.00 and HRK 20,000.00:
- 1) if they fail to establish and implement effective and sound governance arrangements in accordance with Article 48, paragraphs (1) and (3) of this Act;
  - 2) if they fail to act in accordance with Article 48, paragraph (2) of this Act and the regulations adopted under paragraph (4) of the same Article;

- 3) if they fail to notify the supervisory board without delay of the circumstances referred to in Article 49 of this Act; or
- 4) if they fail to deliver reports and information to the Croatian National Bank in the manner and within the time limit referred to in Article 202 of this Act.

(2) Members of a credit institution's supervisory board shall be fined between HRK 5,000.00 and HRK 20,000.00:

- 1) if they fail to submit an application to the Croatian National Bank for prior approval for the appointment of the chairperson or member of the management board within the time limit referred to in Article 46, paragraph (10) of this Act;
- 2) if they fail to adopt the decision referred to in Article 51, paragraph (6) of this Act without delay;
- 3) if they fail to perform their duties in accordance with Article 54, paragraph (1), items (1) to (3) of this Act; or
- 4) if they fail to notify the Croatian National Bank without delay of the circumstances referred to in Article 54, paragraph (1), item (4) of this Act.

### **Violations by other persons**

#### **Article 364**

(1) A legal person using the words 'credit institution', 'bank', 'savings bank', 'housing savings bank', or derivatives of these words contrary to the provisions of Articles 3, 311 or 317 of this Act shall be fined between HRK 10,000.00 and HRK 50,000.00.

(2) A responsible person of the legal person that committed the violation referred to in paragraph (1) of this Article shall be fined between HRK 5,000.00 and HRK 20,000.00.

(3) A legal person who receives deposits or other repayable funds from the public contrary to the prohibition referred to in Article 57 of this Act shall be fined between HRK 100,000.00 and HRK 500,000.00.

(4) A responsible person of the legal person that committed the violation referred to in paragraph (3) of this Article shall be fined between HRK 50,000.00 and HRK 100,000.00.

(5) A natural person who receives deposits or other repayable funds from the public contrary to the prohibition referred to in Article 57 of this Act shall be fined between HRK 50,000.00 and HRK 100,000.00.

(6) A legal person who is a shareholder of a credit institution and who acquires shares of a credit institution in a manner contrary to the provisions of Article 34, paragraphs (1) and (2) of this Act or fails to comply with the order of the Croatian National Bank referred to in Article 40, paragraph (2) of this Act shall be fined between HRK 500,000.00 and HRK 1,000,000.00.

(7) A responsible person of the legal person that committed the violation referred to in paragraph (6) of this Article shall be fined between HRK 50,000.00 and HRK 100,000.00.

(8) A natural person who is a shareholder of a credit institution and who acquires shares of a credit institution in a manner contrary to the provisions of Article 34, paragraphs (1) and (2) of this Act or fails to comply with the order of the Croatian National Bank referred to in Article 40, paragraph (2) of this Act shall be fined between HRK 50,000.00 and HRK 100,000.00.

(9) Legal persons who are holders of a qualifying holding and who fail to notify the Croatian National Bank, or who fail to notify the Croatian National Bank within the time limit referred to in Article 34, paragraph (8) of this Act, of any process of merger, acquisition or division in which they participate or of any other change in the status shall be fined between HRK 50,000.00 and HRK 100,000.00.

(10) A responsible person of the legal person that committed the violation referred to in paragraph (9) of this Article shall be fined between HRK 10,000.00 and HRK 50,000.00.

(11) Natural persons who are holders of a qualifying holding and who fail to notify the Croatian National Bank, or who fail to notify the Croatian National Bank within the time limit referred to in Article 34, paragraph (8) of this Act, of any process of merger, acquisition or division in which they participate or of any other change in the status shall be fined between HRK 10,000.00 and HRK 50,000.00.

(12) The legal persons referred to in Article 200, paragraph (2) of this Act who fail to deliver reports and information to the Croatian National Bank or who fail to enable an examination of a part of their operation shall be fined between HRK 100,000.00 and HRK 500,000.00.

(13) A responsible person of the legal person that committed the violation referred to in paragraph (12) of this Article shall be fined between HRK 10,000.00 and HRK 50,000.00.

(14) The natural persons referred to in Article 200, paragraph (2) of this Act who fail to deliver reports and information to the Croatian National Bank or who fail to enable an examination of a part of their operation shall be fined between HRK 10,000.00 and HRK 50,000.00.

**Violations by members of a group of credit institutions**  
**Article 365**

(1) A fine between HRK 1,000,000.00 and HRK 2,000,000.00 shall be imposed on:

- 1) a parent financial holding company or mixed-activity holding company which fails to act in accordance with Article 34, paragraph (8) of this Act;
- 2) an RC parent credit institution or the subsidiary credit institution referred to in Article 127, paragraph (2) of this Act which has to comply with prudential requirements on a consolidated basis for a group or sub-group of credit institutions if it fails to meet the requirements referred to in Article 127 of this Act or the parent financial holding company referred to in Article 282 of this Act if it fails to meet the requirements referred to in Article 127, paragraph (8) of this Act;
- 3) a subsidiary member of a group of credit institutions in the RC or the parent financial holding company referred to in Article 282, paragraphs (1) and (3) to (5) of this Act if it fails to meet its obligations referred to in Article 286, paragraph (1) of this Act to the parent credit institution of the group or the credit institution referred to in Article 127, paragraph (2) of this Act;
- 4) an RC parent credit institution or the credit institution referred to in Article 127, paragraph (2) of this Act which fails to meet its obligation referred to in Article 286, paragraph (2) of this Act;
- 5) a subsidiary member of a group of credit institutions in the RC or the parent financial holding company referred to in Article 282, paragraphs (1) and (3) to (5) of this Act if it fails to enable the Croatian National Bank to exercise supervision of its operations in accordance with Article 286, paragraph (3) of this Act;
- 6) the parent undertaking of a credit institution which has its registered office in the Republic of Croatia and is not included in consolidation of the parent undertaking, which fails to meet its obligations referred to in Article 286, paragraph (4) of this Act;
- 7) members of a group the parent undertaking of which is a credit institution having its registered office in the Republic of Croatia or the parent financial holding company referred to in Article 282, paragraphs (1) and (3) to (5) of this Act, which are not included in supervision on a consolidated basis and which fail to meet their obligations referred to in Article 286, paragraph (5) of this Act;
- 8) legal persons which fail to act in accordance with the regulations adopted under Article 295 of this Act; or
- 9) a mixed-activity holding company and its subsidiaries which fail to meet their obligations referred to in Article 296, paragraph (1) of this Act.

(2) A responsible person of the legal person that committed any of the violations referred to in paragraph (1) of this Article shall be fined between HRK 25,000.00 and HRK 100,000.00.

### **Violations by audit firms and certified auditors**

#### **Article 366**

(1) An audit firm shall be fined between HRK 100,000.00 and HRK 500,000.00:

- 1) if it fails to carry out an audit of financial statements and to prepare an audit report in accordance with Article 190, paragraph (2) of this Act;

- 2) if it fails to notify and explain to the Croatian National Bank the termination of a contract with a credit institution in accordance with Article 193, paragraph (1) of this Act;
- 3) if it fails to meet its obligations referred to in Article 194 of this Act; or
- 4) if it fails to carry out an audit for the purposes of the Croatian National Bank in accordance with Article 196 of this Act and the regulations adopted under paragraph (3) of the same Article.

(2) A responsible person of the legal person that committed any of the violations referred to in paragraph (1) of this Article shall be fined between HRK 50,000.00 and HRK 100,000.00.

(3) A certified auditor shall be fined between HRK 10,000.00 and HRK 50,000.00 for any of the violations referred to in paragraph (1) of this Article.

### **Violations related to the obligation of banking secrecy** **Article 367**

(1) A credit institution that breaches the provisions of this Act on the obligation of banking secrecy shall be fined between HRK 500,000.00 and HRK 1,000,000.00.

(2) A responsible person of the credit institution's management board shall be fined between HRK 25,000.00 and HRK 100,000.00 for the violation referred to in paragraph (1) of this Article.

(3) A legal person shall be fined between HRK 500,000.00 and HRK 1,000,000.00 for the violation referred to in Article 169, paragraph (1) of this Act. A responsible person of that legal person shall be fined between HRK 25,000.00 and HRK 100,000.00 for the violation referred to in Article 169, paragraph (1) of this Act.

(4) A natural person shall be fined between HRK 25,000.00 and HRK 100,000.00 for the violation referred to in Article 169, paragraph (1) of this Act.

(5) The legal person referred to in Article 170, paragraph (1) of this Act who breaches the provisions of this Act on the obligation of banking secrecy shall be fined between HRK 500,000.00 and HRK 1,000,000.00.

(6) A responsible person of the legal person referred to in Article 170, paragraph (1) of this Act shall be fined between HRK 25,000.00 and HRK 100,000.00 for the violation referred to in paragraph (5) of this Article.

(7) The natural person referred to in Article 170, paragraph (2) of this Act who breaches the provisions of this Act on the obligation of banking secrecy shall be fined between HRK 25,000.00 and HRK 100,000.00.

**Limitation**  
**Article 368**

(1) Violation proceedings against credit institutions, members of the management or supervisory board, subsidiary credit institutions in a group of credit institutions in the RC, auditors and other persons who allegedly committed any of the violations under this Act may not be initiated following the expiry of three years from the date on which the violation was committed.

(2) Any action taken by the competent authority for the purpose of proceedings relating to the person who committed the violation shall interrupt the limitation period. The limitation period shall restart after each interruption, but the violation proceedings may in no case be initiated following the expiry of twice the limitation period laid down in paragraph (1) of this Article.

**XXXI TRANSITIONAL AND FINAL PROVISIONS**

**Time limits for compliance with the provisions of this Act**  
**Article 369**

(1) Banks, savings banks and housing savings banks entered in the register of companies as of the date of the entry into force of this Act and authorised, i.e. having authorisation to provide banking and financial services, shall continue operating as credit institutions under this Act on the basis of the existing authorisation.

(2) Other authorisations and approvals issued before the entry into force of this Act shall remain in force.

(3) Credit institutions referred to in paragraph (1) of this Article shall adjust the composition of their supervisory boards to the provisions of Article 52, paragraph (1), item (3) of this Act within one year of the entry into force of this Act.

(4) Credit institutions shall adjust their operation to the following provisions of this Act by 1 July 2009:

- on capital adequacy (Title V);
- on large exposures (Title VI);
- on holdings in non-financial institutions and tangible assets (Title VII);
- on the powers of procurators and the entry of the limitations on the powers of procurators in the register of companies (Article 43, paragraphs (4) and (5));
- on the composition of the supervisory board (Article 52, paragraph (4));
- on internal capital (Article 111);
- on the carrying out of analyses of alternative scenarios related to liquidity risk management (Article 121, item (5));
- on contingency plans and business continuity plans (Article 122, paragraph (3));
- on outsourcing of business activities (Articles 164 and 165);
- on public disclosure (Articles 176 to 179);

- on a compliance function (Article 180, paragraph (1), item (2) and Article 182); and
- on the use of advanced electronic signatures (Article 305, paragraph (4)).

(5) Savings banks referred to in paragraph (1) of this Article shall adjust to Article 157 of this Act at the latest within one year of the entry into force of this Act.

(6) Credit institutions referred to in paragraph (1) of this Article shall adjust their general bylaws to the provisions of this Act and regulations adopted under this Act within six months of the entry into force of this Act.

(7) Persons acting in concert pursuant to Article 25 of this Act shall adjust to the provisions of Article 34 of this Act within six months of the entry into force of this Act.

(8) Where shares of a credit institution are held in a custody account, the legal person providing custody services shall adjust the maintenance of the custody account to the provision of Article 30, paragraph (6) by 30 June 2009 at the latest.

**Status of credit institutions of the Member States up to the date of accession of the  
Republic of Croatia to the European Union  
Article 370**

Up to the date of accession of the Republic of Croatia to the European Union, the provisions of this Act relating to third-country credit institutions shall apply *mutatis mutandis* to credit institutions of the Member States.

**Procedures  
Article 371**

All authorisation and approval procedures initiated before the entry into force of this Act shall be completed in accordance with the provisions of the laws in force up to the date of the entry into force of this Act.

**Transitional adjustment of the IRB and Advanced Measurement Approaches for the  
calculation of capital requirements for operational risk  
Article 372**

(1) Credit institutions using the IRB Approach, on an individual or consolidated basis, for the calculation of risk-weighted exposure amounts for credit risk shall provide own funds in the amount not less than 80 percent of the total minimum amount of own funds that would be calculated under the provisions of the Decision on the capital adequacy of banks (Official Gazette 17/2003, 120/2003, 149/2005, 130/2006, 130/2007 and 31/2008) during the twelve-month period starting from 1 January 2009.

(2) Credit institutions using the Advanced Measurement Approaches, on an individual or consolidated basis, for the calculation of their capital requirements for operational

risk shall provide own funds in the amount not less than 80 percent of the total minimum amount of own funds that would be calculated under the provisions of the Decision on the capital adequacy of banks (Official Gazette 17/2003, 120/2003, 149/2005, 130/2006, 130/2007 and 31/2008) during the twelve-month period starting from 1 January 2009.

3) Compliance with the requirements of paragraphs (1) and (2) of this Article shall be on the basis of amounts of own funds fully adjusted to reflect differences in the calculation of own funds under the provisions of the Decision on the capital adequacy of banks (Official Gazette 17/2003, 120/2003, 149/2005, 130/2006, 130/2007 and 31/2008) and the calculation of own funds under this Act.

**Regulations that shall cease to have effect on the date of the entry into force of this Act**  
**Article 373**

(1) The Banking Act (Official Gazette 84/2002 and 141/2006) shall cease to have effect on the date of the entry into force of this Act, with the exception of the provisions of Article 28, paragraph (1), item (3), Articles 62, 63, 65, 66, 68, 69, 70, 72, 74 to 78, 82 to 84, 87, 128, paragraphs (1) and (2), Article 132, paragraph (2), item (3) and Article 182 which shall cease to have effect on 30 June 2009.

(2) The Decision regulating market competition within the banking sector (Official Gazette 48/2003) shall cease to have effect on the date of the entry into force of this Act.

(3) The Croatian National Bank shall adopt subordinate legislation under this Act within six months of the entry into force of this Act.

(4) Before the entry into force of the regulations under this Act, the regulations adopted under the Banking Act (Official Gazette 84/2002 and 141/2006) shall apply as appropriate.

**Provisions of this Act that shall cease to have effect on the date of accession of the Republic of Croatia to the European Union**  
**Article 374**

Article 39, items (2) and (3), Article 62, items (2) and (3) and Article 71 of this Act shall cease to have effect on the date of accession of the Republic of Croatia to the European Union.

**Deciding on permissions for the use of internal models for the calculation of capital requirements and public disclosure requirements up to the date of accession of the Republic of Croatia to the European Union**  
**Article 375**

(1) Up to the date of accession of the Republic of Croatia to the European Union, the Croatian National Bank may allow the particular qualifying criteria for the use of approaches and internal models to be met by an RC parent credit institution and its subsidiaries considered together, where the RC parent credit institution and its subsidiaries or subsidiaries of a credit institution's RC parent financial holding company calculate capital requirements for credit and operational risks by using the approaches referred to in Article 128, paragraph (1), items (1) and (4) of this Act on a consolidated basis.

(2) Up to the date of accession of the Republic of Croatia to the European Union, a credit institution which has its registered office in the Republic of Croatia and has the status of an RC parent credit institution, and a credit institution which has its registered office in the Republic of Croatia and is a subsidiary of an RC parent financial holding company, and which has to comply with prudential requirements on a consolidated basis shall comply with the public disclosure requirements referred to in Articles 176 to 178 of this Act on a consolidated basis.

### **Entry into force** **Article 376**

(1) This Act shall be published in the Official Gazette and shall enter into force on 1 January 2009, with the exception of the provisions of Article 36, paragraph (4), Article 56, item (2), Articles 72 to 78, Articles 81 to 86, Article 92, Article 127, paragraphs (3) to (6), Article 158, paragraph (2), item (3), Article 160, paragraph (3), Articles 209 to 217, Article 219, Article 220, Article 222, Article 227, Article 228, paragraph (1), item (2), Article 282, paragraphs (4) and (5), Article 285, Article 286, paragraph (6), Articles 287 to 291, Articles 293 to 294, Article 296, paragraph (4), Article 298, Article 300, Article 301, paragraph (2), Article 303 and Articles 331 to 359 of this Act, which shall enter into force on the date of accession of the Republic of Croatia to the European Union.

Class: 450-05/08-01/01  
Zagreb, 26 September 2008

THE CROATIAN PARLIAMENT  
The President of the Croatian Parliament  
**Luka Bebić**, m.p.