

# Legal Bulletin

January 2008

Banking Law	1
Fondul Proprietatea	3
Private Pensions	4
Public Finance	6
Real Estate	8

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## Banking law

1. **Regulations concerning the assessment of adequacy of the supervision framework in the third country of origin and the checking of the equivalence of the supervision exercised by the competent authorities of third countries**

Name of the enactment	NBR Regulation No. 2/2008 on the assessment of adequacy of the supervision framework in the third country of origin and the checking of the equivalence of the supervision exercised by the competent authorities of third countries with the one governed by the principles under Government Emergency Ordinance No. 99/2006 on credit institutions and adequacy of the share capital, as approved with amendments and completions by Law No. 227/2007
Publication	Official Gazette of Romania, Part I, No.69/29.01.2008
Entry into force	29 January 2008
Connections with other enactments	Government Emergency Ordinance No. 99/2006 on credit institutions and adequacy of the share capital, as approved with amendments and completions by Law No. 227/2007
Connections with the Community legislation	Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, published in the Official Journal of the European Union No. L 177 of 30 June 2006
Main provisions	<p>NBR Regulation No. 2/2008 sets forth the basic principles based on which the National Bank of Romania performs the following analyses pertaining to its competence:</p> <ul style="list-style-type: none"><li>• assessment of the adequacy of the supervision framework in the third country of origin of a person who will hold qualified interests in a Romanian credit institution or in a credit institution which intends to carry out business in Romania through a branch;</li><li>• checking the equivalence of the supervision on a consolidated basis exercised by the competent authorities of third countries;</li><li>• checking the equivalence of the prudential regulation framework in the case of the branches of credit institutions of third countries;</li></ul>

- checking the equivalence of the regulation and supervision rules applied by the competent authorities of third countries with those applicable in Romania, for the purpose of determining the minimal share capital requirements for covering the risks of a credit institution.

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## **2. Regulation on the transformation of financial institutions into credit institutions**

Name of the enactment

NBR Regulation No. 1/2008 of 23 January 2008 on the transformation of financial institutions into credit institutions

Publication

Official Gazette of Romania, Part I, No. 70/30.01.2008

Entry into force

30 January 2008

Connections with other enactments

Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law 227/2007

Main provisions

The procedure of transforming a financial institution into a credit institution involves two stages: 1) approval of the transformation of the financial institution into a credit institution, 2) authorizing the operation of the resulting credit institution.

For the purpose of obtaining the approval for the transformation into a credit institution, the financial institution has to provide to NBR an application for approval of the transformation (the application form is an appendix to this Regulation) and the financial statements drawn up for the end of the quarter before the date of submitting the application, signed by the authorized representatives and audited without reservations by a financial auditor.

NBR decides as to the application for approval of the transformation within at most 4 months as of receipt of the application and will communicate its decision to the applicant in writing.

If NBR rejects the application for approval of the transformation of the credit institution, the decision will include the reasons why.

For the purpose of obtaining the operation permit for the credit institution, the applicant has to comply with the following requirements within at most two months as of the communication of the approval to transform the credit institution: 1) take all the measures required to comply with the legal requirements provided for the resulting credit institution; 2) comply with all the

publicity formalities related to the transformation into a credit institution, with the Trade Register, 3) provide to NBR the documents required for obtaining the operation permit.

Starting on the date of recording with the Trade Register the notes related to the transformation and before the authorization of the operation as a credit institution, the financial institution can continue to carry out only those types of activities that were allowed for it according to the applicable laws and which are included in the updated articles of incorporation.

NBR decides as to the authorization of the operation of the credit institution within at most 4 months as of the receipt of all the documents required for authorization purposes.

If the operation permit is not granted, then the approval of the transformation will be revoked.

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## Fondul Proprietatea

Name of the enactment

Government Decision No. 1581/2007 for the amendment and completion of Government Decision No. 1481/2005 on the incorporation of S.C. „Fondul Proprietatea” - S.A. (“GD 1581/2007”)

Publication

Official Gazette of Romania, Part I, No. 22/11.01.2008

Entry into force

11 January 2008

Connections with other enactments

Government Decision No. 1481/2005 on the incorporation of S.C. „Fondul Proprietatea” - S.A. (“GD 1481/2005”)

Main provisions

GD 1581/2007 amends GD 1481/2005 in terms of the procedure for assessing the assets of Fondul Proprietatea and, moreover, it approves the new articles of incorporation of S.C. “Fondul Proprietatea” S.A. The new articles contain a number of amendments to the prior version approved by GD 1481/2005. The most important amendments contemplated the following:

- The new enactment removes the provision under the previous articles of incorporation according to which the shares of Fondul Proprietatea could be traded on the regulated markets. As a result, the assignment of the shares between shareholders or to third parties is made under the conditions and in observance of the ordinary law procedure;
- Fondul Proprietatea is administered in a dual system. The general

meeting of shareholders elects a Board of Supervision made up of 7 members. In its turn, the Board appoints a Management Committee made up of at least three persons;

- The articles of incorporation approved by GD 1581/2007 provide for an allocation of the voting rights by distinguishing as per the shareholdings of each shareholder, according to the following rules:
  - in the case of an interest held by a shareholder, representing up to 1% of the paid share capital of Fondul Proprietatea, each share entitles to one vote;
  - in the case of an interest held by a shareholder, representing up to 3% of the paid share capital of Fondul Proprietatea, the shares representing up to 1% of the paid share capital of Fondul Proprietatea entitle to one vote each, and the shares representing from 1% to 3%, two shares entitled to one vote;
  - In the case of an interest held by a shareholder, representing up to 5% of the paid share capital of Fondul Proprietatea, the shares representing up to 1% of the paid share capital of Fondul Proprietatea entitle to one vote each, the shares representing from 1% to 3%, two shares entitle to one vote, and the shares representing from 3% to 5%, 3 shares entitle to one vote;
  - the interests held by one shareholder, representing over 5% entitle to voting as follows: the shares representing up to 1% from the paid share capital of Fondul Proprietatea entitle to one vote each, the shares representing from 1% to 3%, two shares entitle to one vote, the shares representing from 3% to 5%, 3 shares entitle to one vote, and the shares representing over 5% do not confer any voting right.

These rules do not apply to the Ministry of Economy and Finance. After the interest held by the Romanian State through the Ministry of Economy and Finance drops below 33% of the share capital paid, the shareholders can decide in respect of the quorum and of the voting right in accordance with the number of shares, in observance of the provisions of the relevant ordinary law.

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## Private Pensions

Name of the enactment	Decision No. 4/2008 of the Commission for Supervision of the Private Pension System approving Norm No. 3/2008 on the transfer of interests among privately administrated pension funds (" <b>Norm 3/2008</b> ")
Publication	Official Gazette of Romania, Part I, No. 66/29.01.2008
Entry into force	29 January 2008
Main provisions	<p>Norm No. 3/2008 regulates the procedure to be complied with by privately administered pension funds and by the participant to a privately administered pension fund for the purpose of performing the participant's personal assets from a privately administered pension fund to another privately administered pension fund.</p> <p>The transfer of the participant from one privately administered pension fund to another is an individual option of the participant and is performed based on a transfer application, a form of which is provided under Appendix No. 1 to Norm No. 3/2008.</p> <p>The transfer applications of participants from a privately administered pension fund to another privately administered pension fund will be processed by the National House of Pension and Other Social Security Rights on a quarterly basis, during the months of February, May, August and November of each year, in observance of the procedure provided under Norm No. 3/2008.</p> <p>Based on the results of the validation procedure, the administrator of the fund from which the transfer is requested proceeds to the payment of the cash availabilities only for the participants whose new act of adhesion was validated.</p> <p>The cash availabilities transferred represent the value of the net personal assets of the participant and cannot be less than the amount of the contributions paid in the latter's name as of acquiring the capacity of participant in a fund for the first time, less the legal fees and transfer penalties, as the case may be.</p> <p>The transfer penalty is determined as a percentage applied to the net personal assets of the participant.</p> <p>The transfer penalty will be applied in accordance with the prospectus of the pension scheme of the fund from which the participant is transferred and is of maximum 5% and applies only to the transfer realized during the first 2 years as of the adhesion of the participant to the fund from which it is transferred.</p>

If the value of the net personal assets of the participant who is transferred from one fund to another is less than the amount of the contributions less the legal fees and transfer penalties, as the case may be, the difference will be covered by the technical provision constituted by the administrator from which the participant is transferred.

The amount of the cash availabilities transferred is calculated based on the last unitary value of the net asset as at the transfer date.

The administrator of the privately administered pension fund from which the participant is transferred will pay the bank fees related to the transfer of the participant's cash availabilities.

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## Public Finance

Name of the enactment

Order No. 2374 of 12 December 2007 on the amendment and completion of Order No. 1752/2005 of the Ministry of Public Finance approving the accounting regulations conforming with the European Directives ("**Order 2374/2007**")

Publication

Official Gazette of Romania, Part I, No. 25/14.01.2008

Entry into force

14 January 2008

Connections with other enactments

It amends Order No. 1752/2005 approving the accounting regulations conforming with the European Directives

Connections with the Community legislation

Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006, published in the Official Journal of the European Union No. L224 of 16 August 2006, amending Council Directive 83/349/EEC

Main provisions

Order 2374/2007 brings new amendments to the accounting regulations conforming to the European Directives, which amendments become applicable as of the financial statements of the financial year 2007. Order 2374/2007 provides for a new structure of the balance sheet as well as for a new structure of the statement for the changes in equity, and brings a new element: "Operation of costs". As concerns this Function, the Order only exemplifies the manner of accounting registration of the main economic-financial operations. According to the new amendments, the legal entities under an obligation to draw up annual consolidated financial statements can draw up such statements either in accordance with the accounting Regulations conforming to Directive VII of the Economic European Communities, or based on the International Standards of Financial Reporting, but if they opted for the International Standards of Financial

Reporting upon drawing up the consolidated annual financial statements, they have the obligation to ensure continuity in implementing it. The order exemplifies expenses related to the tangible fixed assets and which are, therefore, allocated to such from the perspective of the value of the assets:

- the costs representing the employees' salaries, related contributions and other related expenses;
- material expenses;
- costs for arranging the site;
- initial costs for delivery and handling;
- costs for installation and fixture;
- project expenses and expenses for procuring the authorizations;
- professional fees paid to the lawyers and experts, etc.

Other amendments brought to the accounting regulations, contained in the appendix to Order No. 1752/2005, concern:

- the obligation of the permanent Romanian headquarters of foreign legal entities to draw up annual financial statements and periodical accounting reports;
- the amortization of investments made in the tangible fixed assets rented;
- including in the category of stocks the assets with a long cycle of production, destined to be sold (e.g. real estate complexes);
- definition of the obligations resulting in the creation of provisions;
- allocation of the profit, in the sense that the entities cannot change the records made in respect of the profit allocation;
- Order No. 1088/2004 of the Ministry of Public Finances approving the Specifications concerning the entry in the accounting records of operations related to the coverage of the accounting loss, published in the Official Gazette of Romania, Part I, No. 679 of 28 July 2004.

Repealed enactments

Order No. 917/2005 of the Ministry of Public Finance on the publication of annual financial statements, published in the Official Gazette of Romania, Part I, No. 582 of 6 July 2005.

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## Real Estate

Name of the enactment	Order No. 371/2007 on tariffs for the services supplied by the National Agency for Cadastre and Real Estate Publicity and its subordinated units (" <b>Order 371/2007</b> ")
Publication	Official Gazette of Romania, Part I, No. 7/04.01.2008
Entry into force	4 January 2008
Connections with other enactments	<ul style="list-style-type: none"><li>• Law No. 7/1996 on cadastre and real estate publicity.</li><li>• Government Decision 1210/2004 on the organization and operation of the National Agency of Cadastre and Real Estate Publicity.</li><li>• Decision No. 39 of 13 December 2007 of the Board of Directors of the National Agency of Cadastre and Real Estate Publicity.</li><li>• Government Emergency Ordinance No. 30/2007 on the organization and operation of the Ministry of Internal Affairs and Administrative Reform.</li></ul>
Main provisions	<p>Order No. 371/2007 approves the tariffs practiced for the services provided by the National Agency of Cadastre and Real Estate Publicity and its subordinated units. Thus, according to Article 1, the individuals and legal entities that request the provision of cadastre and real estate publicity services have the obligation to pay the tariffs established in the appendix to this order. However, para. 4 of the above-mentioned article provides for certain exemptions from the payments for the services provided under item 7.1 of the appendix. But, if the provision of such services under an emergency regime is requested, an emergency tariff of RON 480 will be applied.</p> <p>Such cadastre and real estate services, i.e. those provided under chapter 7 of the appendix, can be provided, in accordance with the provisions of this order, under an emergency regime as well. This involves the payment of emergency tariffs, and the term for the settlement is thus reduced to a third of the normal term. The provision of the services under an emergency regime involves, in addition to the payment of the tariffs for the provision of the services on time, the payment of an additional tariff of four times the value of the normal tariff, but not exceeding RON 5,000.</p> <p>However, para. 8 of Article 1 provides that the compliance with the applications for registration in the land book under an emergency regime cannot derogate from the principle of priority of registrations in the land book. If the observance of the principle mentioned above does not allow complying with the request</p>

under an emergency regime, the emergency tariff will be reimbursed to the applicant.

Please note that Article 2 provides for the possibility to submit, at the cadastre and real estate publicity office, a request for reexamination against the manner of establishing the tariff. In such a case, the request will be complied with by the manager of the office, who can order the full or partial restitution of the tariff contested.

The order under review also provides for the possibility to exempt from the payment of the tariffs for the services of receiving the cadastre and real estate publicity works requested under a normal or emergency regime by the National Agency of Cadastre and Real Estate Publicity, by its subordinated units and by the persons acting as employees of the National Agency of Cadastre and Real Estate Publicity or of the subordinated units, if such are title-holders of a real right on the real estate forming the object of the request.

In addition, the order provides for the option to grant discounts for the supply of certain services.

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