

LAW No. 83/1997

for privatisation of commercial banks in which the state is shareholder

The Parliament of Romania enacts the present law.

Art. 1. The commercial banks in which the state is shareholder, hereinafter referred to as *the banks*, set up in virtue of Law No. 15/1990 on the re-organisation of state-owned commercial companies and Law No. 33/1991 on banking business, shall be privatised in accordance with the present law.

Art. 2. (1) Privatisation of the banks shall be made through one of the following procedures:

- a) social capital increase by contribution of private capital in cash, based either on public offer or private investment, according to the legal provisions in force;
- b) sale of shares administered by the State Ownership Fund (SOF), only in exchange for cash paid in full to Romanian natural and majority private capital legal persons, including financial investment companies resulting from change-over of the Private Ownership Funds (POFs) as well as to foreign natural and majority private capital legal persons;
- c) combination of the procedures provided for under a) and b) above.

(2) International financial institutions are an exemption from the provisions under par. (1) regarding foreign legal persons.

Art. 3. (1) Based on Art. 3 par. (5) and on Art. 6 par. (1) of Law No. 55/1995 on speeding-up the privatisation process, the social capital quotas allocated to the POFs in the banks, according to Law No. 58/1991* for privatisation of commercial companies, are subject to regularisation between the SOF and the Financial Investment Companies resulting from changeover of the POFs, based on the value of these shares at the moment of their allocation.

(2) Shares to be regularised in accordance with the provisions of par. (1) shall be administered and sold by the SOF through the methods provided for by the present law.

Art. 4. The sale of shares administered by the SOF may be carried out through any of the methods provided for by Law No. 58/1991 for the privatisation of commercial companies, Law No. 52/1994 on securities and stock exchanges, and the norms issued in order to enforce the present law.

* Law No. 58/1991 was amended by Government Emergency Ordinance No. 15/1997, published in the Official Gazette of Romania, par. 1, No. 88/May 13, 1997.

Art. 5. (1) The SOF, as manager of the state-owned equity, may appropriate to each of the banks a number of shares representing a quota of the social capital or may opt for retaining the *golden share*, as the case may be.

(2) The *golden share* stipulated under par. (1) grants the government the following rights:

- a) the appointment of its representative in the banks' administration board;
- b) the possibility of opposing, by using the veto in the general meeting of the shareholders or in the administration board, to the decisions made by other shareholders regarding pledges or mortgages to be set up on the banks' assets, and to the decisions regarding mergers by absorption or administrative liquidation according to Law No. 31/1990 on commercial companies, in the event that by merger or administrative liquidation the interest of the government would be affected.

(3) Government's *golden share* in the banks may be converted into registered ordinary shares by government decision.

Art. 6. (1) Following the joint suggestion made by the National Bank of Romania, the National Agency for Privatisation and the SOF with a view to privatising the banks, by government decision, a privatisation commission in charge of attaining the objectives laid down by the present law and observing the transparency, stringency and objectivity shall be set up.

(2) The privatisation commission shall monitor all operations linked to the banks' privatisation, according to the present law.

(3) The privatisation commission shall consist of 7 members, of which one is the president.

(4) The position of a member in the privatisation commission is incompatible with the position of a member in the administration board of the banks, director in the respective banks or member in its supervision committee, as well as with the action to carry on any activity susceptible to make him dependent on the potential buyers of shares offered for sale.

(5) The members of the privatisation commission may not obtain, by way of documents *inter vivos*, shares issued by the banks 3 years after their mandate has run out; during this period, they are also compelled to keep strict confidence over the facts and documents they had access to, while fulfilling their duties and which refer to the bank whose privatisation they monitor.

(6) The members of the privatisation commission shall not hold, sooner than 3 years after their mandate has run out, the position of administrator, member of the executive board or supervision committee in any of the banks operating in Romania, in one of its branches, or exercise a remunerated activity in the banks.

(7) All privatisation commissions shall submit to the government a report on the privatisation process for which it was appointed, both at its completion and the completion of each stage.

Art. 7. (1) Privatisation of banks through any of the methods and procedures provided under Art. 2 and 4 hereof shall be made on the basis of a valuation report and a feasibility study drafted by a specialised company, selected by means of auction, consistent with the methodological norms approved by government decision at the joint suggestion of the National Bank of Romania, the National Agency for Privatisation and the SOF.

(2) The valuation report on one of the banks shall be made consistent with international standards. The feasibility study shall include recommendations on the following issues:

- a) the privatisation procedure and the method(s) to be used;
- b) the optimal shareholding resulting from privatisation;
- c) the social-capital maximal quota natural and/or legal persons are entitled to;
- d) the social-capital maximal quota to be offered for privatisation in one stage;
- e) the social capital quota to be reserved for the state, as stipulated under Art. 5 hereof;
- f) the categories of shares which may be issued, the amount of the issue premium and that of the selling price, in the case that the most suitable privatisation procedure is the increase in social capital or a combination of it with the sale of shares by the SOF.

(3) The main elements of both valuation report and feasibility study adopted by the privatisation commission shall be published in the leading daily newspapers nationwide as well as in the leading international financial weeklies.

Art. 8. (1) The methods and procedures to be used as well as shares to be obtained by natural or legal persons during privatisation of the banks shall be set up, for each case, by government decision at the suggestion of the privatisation commission, based on the consultation and the common endorsement of the National Agency for Privatisation, the National Bank of Romania and the SOF.

(2) At the request of the privatisation commission, the government shall decide on the circumstances in which the privatisation method for the banks may be changed in compliance with the previous paragraph.

Art. 9. (1) Purchase of shares formerly owned by the SOF by the persons provided under Art. 2 letter b) shall be made in both lei and foreign exchange. The foreign exchange amounts collected by the SOF for the shares it administers at the banks and which are subject to a deed of conveyance shall be assigned to the state's foreign exchange reserve; the National

Bank of Romania shall pay the equivalent in lei of the assigned amount at the exchange rate announced for the transaction date.

(2) If the selected privatisation procedure is the increase in social capital, including a combination with sale of SOF-owned shares, the subscription of shares shall be made in lei and the payment shall be made in both lei and foreign exchange.

(3) If the foreign natural or legal persons chooses to pay for the shares in lei, in full or in part, they shall prove that the respective amounts in lei were obtained in observance of the foreign exchange regime applicable in Romania.

Art. 10. (1) Commercial banks, Romanian or foreign legal persons, which are operating in Romania shall not grant credits to pay for the shares obtained from the SOF or for the subscribed shares in the case of social capital increase of the banks to be privatised.

(2) Romanian or foreign natural or legal persons shall not use domestic credits to purchase, in no form whatsoever, the shares issued by the banks which are subject to the present law.

(3) In the case of foreign borrowing, it is forbidden to set up a mortgage on the shares which are to be purchased to guarantee for the reimbursement of the credit.

(4) The purchase of shares with violation of par. (1), (2) and (3) is absolutely void.

Art. 11. Provisions of Art. 48 and 49 of Law No. 58/1991 on privatisation of commercial companies and of Art. 8 of Law No. 55/1995 on speeding-up the privatisation process are not applicable to the banks which are privatised in accordance with the present law.

Art. 12. (1) The amounts resulting from sale of shares in the banks privatised in accordance with the present law are transferred to the special development fund at the government's disposal.

(2) The utilisation of the fund as stipulated under par. (1) shall be made by law.

Art. 13. (1) Within 30 days from the date the majority of the banks' social capital was privatised, the new structure of the shareholders' extraordinary general meeting shall be convened.

(2) The agenda of the meeting of shareholders stipulated under par. (1) shall include the change of the certificates of incorporation and the election of the new administrators of the privatised bank.

(3) The SOF shall be represented in the administration board of the banks with partly state-owned social capital in the proportion of the administered shares.

Art. 14. (1) Romanian or foreign natural or legal persons that act directly or indirectly, separately or jointly, and in concert with third parties, shall not obtain the ownership right over an amount of shares in excess of 20 percent of the total social capital of the bank which is

privatised in accordance with the present law, except for the well-known international financial institutions.

(2) In order to obtain the ownership right over an amount of shares in excess of 5 percent of the total social capital of the bank, a natural or legal persons, either Romanian or foreign, acting directly or indirectly, separately or jointly, and in concert with third parties shall obtain the prior approval of the National Bank of Romania.

(3) If the ownership right over the shares of the bank undergoing privatisation is obtained with violation of the provisions under par. (1) and (2), this shall be considered a violation of the banking prudential norms and shall be sanctioned by cancelling the voting rights of the respective shareholder and with the obligation of the latter to assign, by law, the respective shares.

(4) The National Bank of Romania shall notify the administration boards of the banks undergoing privatisation about cancellation of the voting rights in the situations provided for under par. (3), as well as about the obligations of the said persons.

(5) If the shares purchased with violation of provisions under par. (1) and (2) have not been assigned within 90 days from the date the violation was found, the National Bank of Romania shall order cancellation of the bank's shares as well as the issue and sale of new shares having the same number; subsequently, the price obtained shall be held at the original purchaser's disposal after deduction of the selling costs.

Art. 15. The future deeds of conveyance of shares as well as any other agreements related to this operation concluded before the period established by the normative acts regarding privatisation of the respective bank are absolutely void.

Art. 16. The Government and the National Bank of Romania shall inform both chambers of the Parliament, on a quarterly basis, based on the reports of the privatisation commissions, on the evolution of the privatisation process of banks and its results.

Art. 17. (1) Operations related to the privatisation process of the banks in terms of the present law are not subject to financial control by the Court of Audit.

(2) The Court of Audit may only exercise preventive control over the amounts transferred to the special development fund at the government's disposal.

Art. 18. (1) The present law comes into force within 30 days from its publication in the Official Gazette of Romania.

(2) Within the deadline provided under par. (1), the National Agency for Privatisation, the SOF and the National Bank of Romania shall submit to the government for approval the organisation measures required to enforce the present law.

The law was adopted by the Senate in the meeting on April 14, 1997, in accordance with the provisions of Art. 74, par. (1) of the Constitution of Romania.

CHAIRMAN OF THE SENATE

PETRE ROMAN

The law was adopted by the Chamber of Deputies in the meeting on April 18, 1997, in accordance with the provisions of Art. 74, par. (1) of the Constitution of Romania.

p. CHAIRMAN OF THE CHAMBER OF DEPUTIES

VASILE LUPU

Bucharest, May 23, 1997

No. 98