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**PRIVATIZATION AND REFORM
OF THE ESTONIAN BANKING SECTOR**

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**Deloitte Touche
Tohmatsu
International**

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INTRODUCTION

In response to a specific request by the the Governor of the Central Bank of Estonia, a team from the Deloitte & Touche consortium reviewed the draft Estonian banking law and the Charter of the Bank of Estonia. The team also conducted a more general review of the Estonian banking sector with the goal of making recommendations to strengthen growth of a private banking industry. The attached report details the findings and recommendations of the Deloitte & Touche Consortium team.

The report is the result interviews and investigation conducted by members of the Deloitte & Touche consortium team both in Estonia and in the United States between July and December 1992.

MEMORANDUM ON PRIVATIZATION AND THE REFORM OF ESTONIA'S BANKING SECTOR

Introduction

This memorandum discusses the critical factors linking privatization and the development of the Estonian financial sector. It is organized according to the following three topics: long term developmental issues, the legal framework, and shorter term solutions. This memorandum is accompanied by a related memorandum drafted by the law firm of Milbank, Tweed, Hadley & McCloy, which addresses the Bank Law of the Republic of Estonia in detail.

Long Term Developmental Issues

There are four privatization and asset distribution programs in various stages of development in Estonia. They cover the privatization of (1) housing, (2) agriculture, (3) large state owned enterprises and (4) compensation or restitution for illegally expropriated property. All of these programs rely on some form of financing to achieve maximum effectiveness. To cite the most likely examples, privatization related financing could be required under the following circumstances:

- 1) For individuals who do not have sufficient housing "vouchers" (distributed to residents according to the number of years they have worked in Estonia) to acquire their homes and therefore require supplemental financing.
- 2) For individuals eligible for restitution of expropriated property who are required to repay the government for increases in the value of the property and who require financing to do so. (Article 13 of the Law on the Fundamentals of Property Reform stipulates that increases in the value of restituted property must be compensated.)
- 3) For organizations which require financing in order to participate in the large enterprise privatization program; such as management or worker buyouts or the purchase of one enterprise by another.
- 4) For newly privatized enterprises which require long term capital investments to ensure their future viability.
- 5) For newly privatized agricultural units which require long term capital investments.

The common denominator of all these forms of financing is that they are long term. However, the Estonian commercial banks are not able to provide significant long term financing. Furthermore the Estonian stock market is still in a developmental stage and is not an alternative source of long term funding. **We consider the lack of long term credit to be the major financial sector impediment to Estonia's privatization programs and have therefore focused on this issue in this memorandum.**

Constraints to Long Term Credit Availability

One of the most important deterrents to long term lending by the Estonian commercial banks is the lack of a long term deposit base. This is caused by four major factors:

- 1) The first factor is uncertainty over future inflation and interest rates by both the banks and potential depositors, which makes both parties unwilling to commit to long term deposit contracts.
- 2) The second important factor is that there is little surplus capital in the Estonian economy. Individuals, state-owned enterprises and new private enterprises are all adjusting to the many changes in the Estonian economy, which have included the monetary reform, loss of historic trading partners in eastern Europe and the former Soviet Union, changes in state budgetary allocations, declines in output related to industrial restructuring, etc. Not only is it difficult for households and firms to increase capital during such a turbulent period, but it is more common to be forced to deplete capital to survive.
- 3) The third factor is due to the relative newness of the commercial banks themselves, together with the uncertain economic environment which can adversely affect bank loan portfolios. The former state-owned banks as well are perceived to have large portfolios of unrecoverable loans from state enterprises, which do not make them any more attractive for depositors than the new commercial banks. As a result, depositors cannot be sure that their long term deposits will be safe. This concern about the safety of deposits has been exacerbated by the moratoria on the activities of three Estonian banks in November 1992 and the subsequent decision to liquidate one of them. The uncertainty about the outcome of the moratoria and in particular about depositors' rights has understandably increased depositor concern about bank solvency.
- 4) The fourth factor is the nature of the consumer deposit base. During the Soviet period the only vehicle for savings was the state owned Savings Bank. This bank, which is now

owned by the Bank of Estonia, still holds the vast majority of individual savings. Individuals are unlikely to shift their savings to other banks in the near term for a number of reasons, the most important of which is that deposits at the Savings Bank are guaranteed by the Bank of Estonia. Other reasons include the force of tradition: the enormous branch and office network of the Savings Bank; and the general lack of interest in consumer banking by the new commercial banks, which have not had the physical facilities nor the inclination to pursue high volume and low income consumer business. It is also likely, although this topic was not pursued in our research, that wealthy individuals prefer the security of offshore foreign currency banking accounts for their savings.

Although the above factors have been discussed in the context of raising deposits, several of them also apply to the lending and borrowing environment. Even if long term funding is available, banks will not lend long term and individuals or firms will not borrow long term without greater confidence in Estonia's future economic and financial stability. Therefore, a long term debt market takes time to develop naturally. Shorter term solutions to the lack of a long term debt market will be discussed after a review of relevant factors in the legal framework.

The Legal Framework

The legal framework is a critical factor in this gradual development of a stable and prosperous banking sector in Estonia. Therefore we requested the American law firm of Milbank, Tweed, Hadley & McCloy to review the Bank Law of the Republic of Estonia and to make recommendations related to the current process of revising this law. Several of the points discussed in their accompanying memorandum bear repeating because of the important relationship that they have to overall economic and financial stability in Estonian and thus to the long term success of privatization. These topics are bank regulation, deposit insurance, bankruptcy provisions, and the relationship of the Bank of Estonia to other governmental institutions.

Regulation

The ability of the Bank of Estonia to regulate the commercial banks is critical to the future stability of the Estonian financial sector. Progress has been made in this regard during 1992, including raising the requirements for minimum bank capital, working on improving and standardizing information provided by the commercial banks to the Bank of Estonia, and laying the groundwork to eventually adopt the capital standards of the Basle Accord. The moratoria

of November 1992 demonstrate both that considerable work remains to develop the Estonian banking system (it was reported in the press that at least one of the banks subject to a moratorium was reporting fraudulent financial data) and that the Bank of Estonia is very serious about its responsibilities. The accompanying memorandum raises four other regulatory issues which are particularly relevant for current developments in the Estonian banking sector. These are as follows:

- 1) Part I, point IB regarding holding company structures: The corporate organization of banks in Estonia will become more complex as Estonian enterprises begin to privatize on a large scale and as banks have opportunities themselves to participate in privatization, for example by underwriting and by investing in privatizing enterprises. The discussion of holding company organization addresses the regulatory aspects of this growing complexity. The discussions of the permissible level of share ownership by banks in Part I IC, and of transactions among affiliates in Part V are also relevant.
- 2) Part I, point IV regarding bank mergers: The new capital requirements for Estonian banks are likely to result in some bank mergers. The accompanying memorandum suggests that the Bank Law specify what authority the Bank of Estonia will have in reviewing these mergers.
- 3) Part II, point IC regarding branches and agencies: The memorandum suggests that the Bank of Estonia increase its ability to regulate the formation of branches and agencies. This is also appropriate in light of the expansion of banks and banking services that can be expected to accompany privatization.
- 4) Part III regarding international operations: The internationalization of Estonia's banking system will increase as privatization proceeds. Part III of the accompanying memorandum recommends that the Bank of Estonia establish some authority over the international operations of Estonian banks. The section on holding companies referred to above also notes the importance of specifying who can own banks, which applies to foreign ownership as well.

Deposit Insurance

Deposit insurance is a topic closely related to banking regulation because it also increases the stability of the financial system. In the United States, for example, the introduction of deposit insurance in 1934 has substantially reduced the number of bank runs since the Depression.

Deposit insurance is a very complex issue, however, with a number of costs. One of the most obvious is the cost to the government of redeeming deposits in failed banks. Using the United States again as an example, this cost has been enormous as a result of the increase in bank failures over the past ten years. Another less quantifiable cost is the influence that deposit insurance has on bank management and on depositors. It is generally assumed that deposit insurance gives bank management a cushion that encourages them to take excess risks and that deposit insurance lessens the incentive for depositors to monitor the financial performance of their banks. These negative influences are sometimes referred to as "moral hazard".

It is not within the scope of this project to advise specifically on the appropriateness of deposit insurance in Estonia. However, it is important to note that the lack of deposit insurance for the commercial banks in Estonia discourages long term deposits for two reasons. One is that there is no mitigant for the risk of making deposits with relatively new banks that are facing a very uncertain economic future. Depositors might be attracted to these banks if their interest rates are so high that they are seen to compensate for the additional risk, but this can put pressure on bank management to undertake riskier investments to support their more expensive funding. The second reason is that because the central bank owned Savings Bank does have deposit insurance for individuals, it is essentially doubly risky for them to place deposits with the commercial banks.¹ (This discussion assumes that the commercial banks are interested in accepting consumer deposits.)

A partial solution may exist in Article 35 of the Bank Law, which states that the Bank of Estonia will supervise the establishment of a deposit insurance fund by the commercial banks. This fund is also mentioned in Article 19 of the Bank of Estonia's statutes. This fund would certainly not be large enough to insure all deposits, but it could provide some added confidence to depositors. It is our understanding that this fund has not yet been established and that, as of early fall 1992, there were no specific plans for doing so. However, it was mentioned during our research that the commercial banks might take the initiative to establish such a fund independently. Given

¹ The status of deposit insurance for enterprises is not clear. One of the three banks under a moratorium is the Northern Estonian Shareholders' Bank, which is owned by the Bank of Estonia. Although its deposits were not explicitly guaranteed by the Bank of Estonia, at the beginning of the moratorium it appeared that the Bank of Estonia would reimburse the depositors. More recently Prime Minister Laar has stated that there are not sufficient funds to provide such reimbursement. The resolution of this issue will have an important impact on the future status of implicit government deposit insurance in Estonia, particularly as it applies to enterprises.

the potential importance of such a fund, we believe that if it is to be established it would be appropriate for the Bank of Estonia to take an active role in its development and supervision. If the fund is developed independently of the Bank of Estonia there are a wide range of potential complications, including misunderstandings by the public of the nature of the fund and lack of coordination or agreement between the Bank of Estonia and the commercial banks regarding when and how the fund could be applied. Therefore, if the fund is established without the Bank of Estonia's involvement, this should be made very clear to depositors. The Bank Law and the Bank of Estonia's statutes should also be reviewed to ensure that there is no ambiguity regarding its relationship to a private commercial bank deposit insurance fund.

It should be noted that if the Savings Bank is sold within several years, as is currently anticipated, the issue of deposit insurance in Estonia will have to be revisited.

Bankruptcy

Another issue related both to bank regulation and to deposit insurance concerns bankruptcies. Depositors need to know what their rights will be in case a bank holding their deposits becomes insolvent. The accompanying legal memorandum outlines issues concerning bank insolvency that could be considered in connection with the planned revisions to Estonia's Banking Law. It should also be noted that Article 57 in the Banking Law, which gives the Bank of Estonia authority to declare one year moratoria for banks in difficulty, may be overly general. The more clarity there is about how these moratoria will work the more likely they are to increase depositor - as well as investor - confidence. For example, it appears that one shortcoming of the recent moratoria has been perceived inequities in allowing access to deposits. Whether or not this inequity exists in fact, Article 57 and related regulations should be structured in a way that such perceptions do not arise.

Moving from the funding base of banks to their lending operations, two important aspects of the legal framework are the Law on Bankruptcy, which became effective in September 1992, and a law on secured lending, which is currently in draft form. Several of the interviewees noted that the impact of the Law on Bankruptcy will become apparent only over time, because the courts will play an important role in its interpretation and implementation. (It is worth noting parenthetically that the bankruptcy laws in Poland and Hungary did not have their initial intended effect, because of the unwillingness of creditors to force clients into bankruptcy.) This process of clarifying the rights of creditors and debtors in bankruptcy should eventually contribute to a more positive environment for long term lending in Estonia. Completion of the law on secured lending should also have a positive influence on the willingness of commercial banks to make

longer term loans, because the ability to take security in well defined conditions is an important risk mitigant.

Central Bank - Government Relationship

The final issue related to a stable economic and financial environment concerns the relationship of the Bank of Estonia to other institutions in Estonia, particularly Parliament and the Ministry of Finance. We understand that it is intended to provide the Bank of Estonia with the maximum level of independence, comparable to the position of the Bundesbank in Germany and the Federal Reserve System in the United States. We agree with the recommendations made by the Bundesbank that this independence could be most effectively ensured if it were more thoroughly elaborated upon in the Banking Law. The current provisions may be adequate for the nature of Estonia's economy today, but, as the economy becomes increasingly complex, more and more questions will arise about what financial responsibility lies where. Therefore we recommend that the precise nature of the Bank of Estonia's relationship with the Ministry of Finance be spelled out in the law.

For example, the recently amended Article 8 of the Bank Law states that the Bank of Estonia is responsible for regulating monetary circulation and for maintaining the stability of the kroon's exchange rate. Responsibility for monetary policy is arguably implicit in these activities, but it would be clearer to make this responsibility explicit. (We understand that the Bank of Estonia is in fact responsible for monetary policy.)

Another example is in the amended Article 8.2 of the Bank Law, which states that the Bank of Estonia participates in formulating the economic policy of the Republic of Estonia. As the Bundesbank pointed out with regard to the previous Article 8.2, it is not clear whether, in this process, the Bank of Estonia is to give priority to maintaining price stability. What guidelines is the Bank of Estonia to follow if the economic policy of the Republic of Estonia contradicts its other responsibilities, such as the maintaining the stability of the kroon's exchange rate? Consideration should be given to how such issues would be resolved. It would also be helpful to spell out exactly how the Bank of Estonia will participate in formulating economic policy. For example, will it be required to submit certain reports, participate in certain committees, etc.

Another organizational factor which influences the degree of a central bank's independence concerns the method for appointing the central bank's senior officers (including board members) and their tenure in office. The central bank's independence increases the less its senior management is dependent on the existing political and governmental authorities for its positions.

This factor should be considered in relation to Estonia's future plans for the frequency of parliamentary elections and the length of tenure of senior central bank officers and board members.

With regard to the degree of independence of the central bank, it is worth noting that central banking experts consider the following five factors (of which the first three have been discussed in this memorandum) as the most important²:

1. Specific assignment of responsibility to direct monetary policy.
2. The length of tenure in office of the central bank's senior management.
3. The procedure for selecting the central bank's senior management.
4. The degree of the central bank's budgetary autonomy.
5. Limits on the central bank's ability to finance the government.

With regard to factors 4 and 5, we note that the Bank of Estonia is intended to be self financing, and that the amendments to the Bank Law of July 8, 1992 include a prohibition on the Bank of Estonia from financing the government's budget deficit.

Finally, other common central banking functions which are not elaborated upon in the current Bank Law include supervision of the bank payments system and the interbank market, as well as open market operations and use of reserves to implement monetary policy. All of these are areas that will grow in complexity as the Estonian market economy develops in connection with privatization. Therefore it is advisable to lay the groundwork in the Bank Law for the Bank of Estonia's authority and capacity in these areas. These topics are also mentioned in the accompanying legal memorandum.

Shorter Term Solutions

The discussion to this point has focused on the economic, legal and regulatory environment necessary to develop a commercial market for long term lending in Estonia. Currently the Bank of Estonia and the Government of Estonia are in the process of creating this environment, but to do so successfully will require time. Since the privatization programs are already in various stages of implementation and, as noted at the outset of this report, all of these programs require long term finance to be maximally effective, other more immediate steps will have to be taken.

² John B. Goodman, Monetary Sovereignty: The Politics of Central Banking in Western Europe (Ithaca: Cornell University Press, 1992), p. 9. (Article 10 (2))

Housing Finance

One partial solution which we understand is already being developed is the creation of a government owned bank to provide housing finance. The major advantage of this solution is that it can be accomplished quickly, while market oriented solutions cannot. However, establishing a government owned bank raises other issues as well. The first issue is whether this is the most cost effective way of creating a mortgage finance market. As is discussed in more detail below, there may be more effective ways to spend the money that will be required to establish and manage this bank. A second issue is that establishing this bank will delay the development of a private mortgage market, because there will no longer be a market demand for it. We question whether this is the intended outcome of establishing this bank. Finally, we understand that it is intended to sell this bank to the public after several years. This goal may conflict with other reasons for establishing this bank, which could include, for example, providing subsidized mortgages to individuals trying to supplement their housing vouchers to purchase their homes. A bank with a significant portfolio of non-market rate loans could be difficult to sell.

It would also be appropriate to estimate the initial demand for consumer finance in the form of mortgages and "restitution financing". If the initial demand is quite small, which could be the case due to the general economic uncertainty, then forming a new bank would not be necessary.

The need for financing related to Estonia's privatization programs creates an extremely important opportunity for the Bank of Estonia and the Government of Estonia to make decisions about the future of Estonia's banking system. With consumer deposits currently insured only by the Savings Bank (owned by the Bank of Estonia), and with the likelihood that mortgages will be provided by a new government owned bank, the result will be that the consumer banking sector will be dominated by the government for the foreseeable future. It is important to determine whether this is the government's actual long term goal or whether this is the result of other decisions being made to address pressing problems.

In the belief that the market can often provide services more cost effectively than government institutions, we recommend that consideration also be given to other means for providing long term home purchase financing. One possibility, which is described in more detail in the addendum, is to create a note finance program in which individuals will gradually repay the government for the purchase of their homes, but no funding will ever take place. The banks could play various roles in administering and sharing risk on these notes, which would enable them to develop experience in long term lending. This approach could also be used to provide financing to individuals who must repay the government for increases in the value of their

restituted property.

We are aware that there was a pilot program in the spring of 1992 to provide subsidized funding for new home construction through the state banks and that the results were not positive. Although we do not know the details of this program and why it failed, specialists generally believe that below market interest rates do not increase the participation of the lower income groups for which such programs are often designed. Furthermore, government provided interest rate subsidies could become extremely expensive to the Estonian government if interest rates remain high. The recommendation in the addendum is to avoid the funding problem for consumer loans entirely by creating a note finance program. However, if this is not possible, another approach could be for the government to commit to placing long term deposits directly with the commercial banks. This could help to provide stability to commercial bank funding and therefore encourage long term lending. It could even be possible to make some long term lending a condition of receiving long term government deposits.

Loan Guarantee Programs

The Estonian commercial banks will also need to develop expertise in long term lending. As was mentioned earlier, a law on security interests will be important for enabling the banks to increase the creditworthiness of long term loans. Another way to encourage prudent long term lending could be to establish a guarantee program in which the government shares risk with the banks on long term loans. This guarantee program could be used for all forms of long term lending in Estonia, from individual mortgages to project finance for newly privatized enterprises. A guarantee program could both encourage banks to make longer term loans and it could also provide the government with an opportunity to influence the credit approval process. Overall, however, the need for training and experience in making long term loans cannot be overstated.

There are two other banks that have already been established or are in the process of being established which will also focus on long term lending. One is the Hypotek Bank, based on branches of the former state-owned Agriculture Bank, which will focus on secured lending to the agricultural sector. The major shareholder of this bank is the Estonian Ministry of Finance. The second bank is the Estonian National Investment Bank, which will be majority owned by the Bank of Estonia and which will focus on foreign currency project financing. Another way to assist the privately owned Estonian banks to develop expertise in long term lending would be through programs enabling them to participate as lenders in loans structured by these two banks.

We believe it is important that no government owned bank has a complete monopoly in any

sector of long term lending. Although the government may consider it necessary to create some banks to meet critical financing needs, it should also leave room for the natural and slower development of long term lending capabilities in the private sector. The more competition there is in this market, the more efficient it is likely to be. Clearly the Estonian banking system is in an early stage of development and the Bank of Estonia is faced by a number of urgent issues, as demonstrated by the recent moratoria, as well as by the need to respond to the demands of privatization. We do not anticipate that a private long term lending market will develop soon nor that the Bank of Estonia has extensive resources to devote to its development. Taking these constraints into consideration, there exist several relatively simple ways in which the Bank of Estonia could contribute to the eventual development of a private long term debt market, such as through a loan guarantee program and private bank participation in government bank loans.

Conclusion

The natural development of a healthy banking sector with the capacity to make long term loans takes time. Not only must there be an appropriate legal and regulatory environment, but individuals and firms must have sufficient confidence in the future to be willing to borrow long term. In addition, banks must have the funding base, the experience, as well as their own confidence in future economic developments to be willing to lend on a long term basis. The Government of Estonia and the Bank of Estonia are taking steps to ensure that these time consuming processes will come to a positive fruition. The accompanying legal memorandum describes in detail possible changes to the Bank Law of the Republic of Estonia which could assist in encouraging these long term processes. However, because privatization is underway and certain long term financing requirements will arise in the near future, more immediate steps must be taken as well. This memorandum has made several suggestions in this regard. The most important theme of these suggestions is that any steps which are taken now, including possibly the establishment of new government owned banks, should take care not to preclude the natural and necessarily slower development of long term lending by the commercial banks.

MILBANK, TWEED, HADLEY & McCLOY

MEMORANDUM

Re: Bank Law of the Republic of Estonia
("Bank Law")

Set forth herein are observations and suggestions on the substance and structure of the Bank Law, offered from the standpoint of United States lawyers familiar with banking and finance. We do not assume that the United States model for bank regulation should be transposed to Estonia; our comments are offered for the purpose of assisting in considering the terms of the Bank Law and how they might be modified. With additional information on the desired policies and objectives of Estonia in the banking area, we can offer specific drafting or restructuring suggestions.

PART 1. GENERAL RECOMMENDATIONS.

I. Banking Powers

A. Drafting Philosophy.

A basic issue arising under the Bank Law relates to the permissible scope of banking activities. In this regard, the drafting philosophy of the Bank Law (based on the translation we have reviewed) is not entirely clear.

In the United States, the law generally provides that banks have only those powers specified by statute, as well as such "incidental" powers as shall be "necessary" to carry on the business of banking. If this concept would be appropriate for

Estonia, the Bank Law might be clarified to so state; otherwise, the parameters of "banking" may be indistinct, creating uncertainties for regulators and for the regulated alike. As one example of the problems potentially raised by Article 2 as presently written, it is not clear whether banks are permitted to engage in insurance activities, considered in some jurisdictions to be financial in nature and thus permitted to banks (or to their affiliates).

It would be helpful, too, if the Bank Law included a clearer definition of the term "bank"; as discussed below, the present definition in Article 1 appears circular. In the United States a bank is generally an institution that both accepts demand deposits and makes commercial loans. It might also be helpful to clarify that the "other operations" permitted to a bank under Article 2 are those that are closely related or incidental to those in the list set forth in Articles 2.1.1 through 2.1.14. Also, in Articles 12.3, 12.4 and 12.5, the distinction between savings unions, credit unions and commercial banks could be clarified. More generally, in order to comply with Article 3 of the European Community's Second Banking Directive, the Bank Law should clearly prohibit non-credit institutions from engaging in the business of taking deposits from the public except to the extent the deposit-taking is expressly covered by national or community legislation subject to regulations and controls intended to protect depositors and investors.

B. Bank Holding Company Structure.

In the United States, the Bank Holding Company Act of 1956 and related laws (1) generally limit the activities of persons controlling United States banks to banking-related activities, thus separating banking from commerce, and (2) enable certain activities that would be prohibited to banks themselves to be carried on in separate affiliated companies. This separation is imposed as a policy matter in part because of concern that if banks are permitted to engage in non-banking activities without restriction, they may be led into conflicts of interest or imprudent lending activities (for example, extending credit to a weak industrial company with which the bank is affiliated). In the case of non-banking financial companies (such as securities affiliates) in the holding company structure, United States law and regulation provide various limitations (sometimes called "firewalls") on dealings between the bank and its affiliates. We suggest consideration be given to the merits of providing for such a structure.

It would also be advisable to set forth in the Bank Law any requirements as to what individuals or entities may or may not own or control an Estonian bank (and to provide for "attribution" rules indicating when ownership of shares by one person or group will be attributed to another). The issue of foreign ownership of United States banks has become an important political issue in the United States. One of the major concerns is the possibility of ownership of a U.S. bank by a foreign financial institution that is itself inadequately regulated (as

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apparently was the case with Bank of Credit and Commerce International). In this regard, the Basle Committee on Banking Supervision's June 1992 release on minimum supervisory standards should be noted. We would be happy to provide a copy of this release upon request.

C. Share Ownership by Banks.

We also suggest it be made clearer to what extent a bank may own shares of other companies. As an example of the policy issues presented here, a bank's ownership of a substantial portion of an industrial company may present the same risks and temptations as are noted above with respect to extensions of credit to affiliated companies.

D. Particular Activities.

Consideration might be given to whether trust activities are to be expressly permitted to banks, and if so whether there should be any special licensing or supervisory requirements for such activity. Article 2.1.14 permits banks to render consulting services; United States banking law generally distinguishes between financial and economic advice, which banks are allowed to provide, and "management consulting" which banks are not allowed to provide, and consideration might be given to limiting the areas in which it is appropriate for an Estonian bank to provide such services. If insurance activities are to be prohibited to banks, it would seem desirable to state this explicitly (and/or to provide, if appropriate, for the conduct of such activities in an affiliate in a holding company structure); regulations should then address exactly what constitutes an

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insurance activity. (In today's financial markets, certain products of insurance companies are virtually indistinguishable from products offered by banks.) In light of the continued evolution of banking, it might be desirable to address bank involvement in swaps, derivatives and commodities businesses.

E. "Ultra Vires" Activity.

Article 2.6 appears to invalidate any transaction in which a bank acts beyond its powers under the Bank Law. This provision has the potential to create difficult legal problems and to make it risky for another person to enter into a contract with the Bank. There should, of course, be penalties for unauthorized activity, but the interests of the financial system may counsel against invalidating such transactions if entered into in good faith by third parties.

II. Structure of Bank Law

We feel it would be desirable for the Bank Law to provide specifically for the chartering of banks, rather than leaving such chartering up to the Enterprise Law. On the other hand, it would seem desirable that the Bank Law concentrate on the banking system and that other topics be dealt with in other Estonian laws. In this regard, several areas might best be dealt with separately in other comprehensive statutes:

Article 14 - The Taxation of Commercial Banks.

Article 39 - The Seizure of and Claims to Financial Assets and Other Valuables Deposited in a Bank.

Article 42 - Collateral. In the United States, this area is addressed generally by a specific statute governing secured transactions that is part of the

commercial laws of the individual states (Article 9 of the Uniform Commercial Code).

Article 45 - Bankruptcy (other than insolvency of banks themselves),

Article 52 - The Rights of Minors with Regard to Deposits.

Article 54 - Testamentary Arrangements of a Depositor.

III. International Operations

We assume that it is intended that non-Estonian banks operating in Estonia are to be accorded substantially the same treatment as Estonian banks - so-called "national treatment". We suggest that this basic principle be incorporated into the Bank Law, rather than being left to regulations which may frequently change. In the United States, the principle of national treatment is set forth in the International Banking Act of 1978.

We also suggest the Bank Law make provision for activities and investments of Estonian banks outside of Estonia. Although a foreign branch or subsidiary of an Estonian bank will be subject to the laws of the jurisdiction where it is located, the Estonian authorities will wish to have authority over the powers and activities of a foreign branch, and to regulate the permissible offshore investments of an Estonian bank. Under United States law, the permissible activities of a bank outside the United States are in some respects broader than its powers domestically (subject always to the legal requirements of the foreign jurisdiction).

IV. Bank Mergers

It may be advisable to address the issue of bank mergers. The statutory provisions could deal with such matters as the percentage of shareholders that must approve a merger and what level of review Bank of Estonia possesses as regulator. A number of United States laws (including the Bank Merger Act) regulate bank mergers with a view, among other things, to preventing undue concentration of financial institutions.

The Bank Law might also provide for conversions from one type of bank to another (for instance, from a savings institution to a commercial bank). Such conversions are addressed in the United States by statutory law.

V. Transactions Among Affiliates; Transactions With Insiders

In the United States, transactions between a bank and its affiliates are closely regulated. This includes transactions between a bank and its parent holding company, between different banks that are owned or controlled by the same parent holding company, and between bank and non-bank subsidiaries of the same holding company. United States law also restricts loans by banks to a single affiliate and to all affiliates, restricts the purchase by a bank of so-called low quality assets from affiliates, and prohibits banks from giving their affiliates favored treatment. These provisions can be helpful in protecting the assets of banks and preventing certain improper activities. Copies of the relevant statutes can be provided upon request.

It may be advisable to consider providing limitations on extensions of credit to, and other transactions involving, individuals associated with a bank. In the United States, loans to executive officers, directors and principal shareholders of a bank are subject to quantitative and qualitative limits. For example, United States law prohibits banks from extending credit to their own executive officers except in accordance with specified requirements; in general, such credit may be extended only if it would be authorized for other borrowers, is on terms no less favorable than those afforded other borrowers, is due and payable upon demand of the bank when the officer receives certain loans from another bank, and the officer has submitted a detailed financial statement.

Another provision of United States law provides for an individual lending limit that applies to the aggregate of an insider's personal and business interests, prohibits insider loans above an amount prescribed by the appropriate bank regulator, requires such loans to be on nonpreferential terms and prohibits overdrafts to directors and executive officers.

Another statutory provision limits purchases and sales involving directors. Such transactions must be done in the regular course of business and on nonpreferential terms. They must be approved by the disinterested directors.

VI. Other Issues

(a) In the United States, statutory law requires bank regulators to cause banks to achieve and maintain adequate levels

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of capital. The regulators satisfy this requirement through the imposition of capital adequacy guidelines. Banks in the United States are subject to a "leverage" measure, by which they must maintain a certain level of "total" and "primary" capital as a percentage of "adjusted" total assets. The second major component of United States capital standards is the risk-based capital measure drawn from the Basle Accord; this method of assessing capital assigns risk weights to assets and also to off-balance sheet items.

We acknowledge and concur with Estonia's intention to follow the Basle Accord. The Basle guidelines reflect the consensus of a significant number of the major industrialized economies, and accordingly it is reasonable to expect that the guidelines will continue to serve as the international standard.

(b) Single borrower lending limits are addressed by statutory law in the United States. One typical provision restricts the loans that a federally-chartered ("national") bank may make to one borrower to 15% of its capital and surplus, plus an additional 10% if the loans are secured by "readily marketable collateral". State laws provide similar lending limits for state-chartered banks. Consideration might be given to adding such specific provisions to the Bank Law in connection with Articles 28.2 and 34.

(c) In the United States, banks are not subject to the general bankruptcy laws governing most corporations and individuals; rather, specific provisions in the banking laws address bank insolvencies. Given the important policy of

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protecting depositors whose funds are placed with banks, bank receivers and conservators have substantial powers conferred by the bank laws. Grounds for appointing a conservator or receiver are identified by statute. For example, for federally chartered banks, the relevant regulator may appoint either a conservator or receiver whenever it is found that: (i) the bank's assets are insufficient to meet its total liabilities or the bank is likely to be unable to meet its obligations as they come due; (ii) assets or earnings are being substantially dissipated in an unsafe manner or the bank is in an unsound condition; (iii) the bank is concealing records or violating governmental orders; (iv) the bank consents to such appointment, ceases to be insured or violates laws or incurs losses in such a way as to threaten the bank's solvency; or (v) the bank becomes undercapitalized and fails to take appropriate steps to become adequately capitalized.

The Federal Deposit Insurance Corporation (the "FDIC") is appointed in many cases as receiver or conservator for a failed or failing bank, and as such it possesses significant powers. For example, the FDIC may seek a judicial stay of actions against the bank, and this stay generally must be granted by a court. Another power which the FDIC possesses is the power (subject to certain conditions) to void the bank's contracts determined to be burdensome, if repudiation would promote the orderly administration of the bank's affairs. The FDIC also has the power as conservator or receiver to avoid certain preferential or fraudulent transfers (that is, transfers made after an act of insolvency or in contemplation of insolvency with

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a view to departing from the ratable distribution of assets or to prefer one creditor over another). Other powers include the ability to charter a new bank and transfer certain assets and liabilities to it from the failed bank.

The statutory law of bank insolvencies in the United States is highly developed. Although it may not be appropriate to provide for the same level of detail in the Bank Law, some coverage of these issues is recommended.

(d) Article 35 of the Bank Law suggests that the mechanism for Estonian deposit insurance remains to be determined. In the United States, this complex area of the banking laws is currently the subject of much debate. One primary aspect of the U.S. system of deposit insurance is the existence of the FDIC, which insures the net amount due to any depositor up to \$100,000. Issues arise in determining the "net" amount (deposits must be maintained in the "same capacity" and the "same right"). Recently, the FDIC adopted a risk-based assessment system, whereby the rates that banks pay for deposit insurance coverage will be affected by the level of risk that they represent to the system. Another important debate centers on the ability of the FDIC to take actions to protect deposits in excess of \$100,000. In another development in June 1992, the Commission of the European Community approved a proposal to issue a Directive that would make deposit protection compulsory within the European Community. This is a complex area as to which more information can be provided if desired.

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(e) United States banking law contains numerous provisions designed to provide protection to consumers, such as the "Truth in Lending Act" and the "Truth in Savings Act", which contain various disclosure requirements and other rules protecting consumers. An important law is the Community Reinvestment Act, which encourages banks to extend credit and provide other services for economically depressed areas.

(f) The Bank Law might deal with electronic funds transfers. In the United States, electronic funds transfers represent an enormous flow of funds. More than \$1 trillion a day is estimated to change hands among banks through the Federal Reserve System's Fedwire system, subject to regulation J of the Federal Reserve Board. The Uniform Commercial Code Article 4A, as codified by the various states, also applies to electronic funds transfers. The United Nations Commission on International Trade Law (UNCITRAL) has also produced a model law on international credit transfers.

PART 2. SPECIFIC COMMENTARY.

A. Article 1

As noted above, the definition of "bank" in Article 1 seems circular because it defines a bank merely as an entity that carries out "bank operations". An alternative that might be helpful in determining whether a particular institution should be regulated as a "bank" would be to define a bank as an institution that engages in certain core activities that are commonly thought of as "banking".

B. Article 2

Article 2.2 seems to conflict with Article 2.3; we suggest this be clarified.

Article 2.1.10 permits banks to engage in leasing. Consideration might be given to whether Article 2.1.10 is intended to allow banks to act as lessor under so-called operating leases. United States law permits banks to lease property only on a non-operating basis, generally requiring the lease to be the functional equivalent of an extension of credit.

If Article 2.1.13 is intended to differ from Article 2.1.12, this might be clarified, or else the two Articles might be combined.

C. Article 5

Article 5.2, dealing with the establishment of branches and agencies, might be clarified in certain respects. First, it would be helpful to know what the term "notifying" is intended to signify and whether this is intended to require that commercial banks submit a written application before opening a branch or agency. The Article might be revised so as to require a license from Bank of Estonia for all branches and agencies as a prudential matter, to insure that an expanding bank has adequate capital for the expansion, and also to comply with the Basle standards for adequate supervision. The Article does not provide for authorization for the branches of foreign banks, nor for authorization to Estonian banks to establish branches abroad; it should do so in order to be consistent with the Basle standards.

The terms, "branch" and "agency" should be defined to indicate, among other things, any differences between these two types of entities.

Article 5.4 refers to "[t]he regulations of the present law". It may be advisable to clarify what regulations are referred to and whether these regulations are the only source of guidance on the founding and liquidation of banks. As noted above, in the United States, bank formation and liquidation (conservatorships, receiverships and insolvency generally) are areas extensively treated by statutory law.

D. Article 6

In Article 6.1, it may be advisable to specify what is meant by "supreme state authorities" and "official standards".

It would be helpful to clarify the effect of Article 6.2 in connection with Article 2.6 (please see the remarks above in section on Ultra Vires activity).

E. Article 12

Article 12 should be considered in light of the definition of "bank" in Article 1. The Article 12 approach is consistent with the United States approach. However, by its definition of "commercial bank", this Article raises the question of whether there are "banks" that are neither "commercial banks" nor "other credit institutions". (The definition of "other credit institutions" was deleted from the text of Article 12 by the amendments of July 8, 1992; this creates a gap, because the heading of Article 12 still refers to these entities.)

Also, it would be helpful to clarify what is meant by the phrase, "a commercial bank has also the right to carry out any other banking operations". If this is a reference back to Article 2, it could be made explicit by stating, "any other banking operations as set forth in Article 2"; otherwise it may create confusion.

We are not sure of the meaning of "blanco credits". The term "specialized credit institutions" should also be defined.

F. Article 13

In Article 13.3, dealing with bank "statutes", it would be helpful to clarify the phrase, "[t]he statute may include other regulations" and by whom these regulations are to be issued.

G. Article 15

The terms "statutory funds" and "founder and partner contributions" should be defined.

H. Article 16

It would seem that the word, "not", in the phrase "unless a different arrangement has not been established" should be deleted.

I. Article 20

Article 20.2, dealing with the grounds for refusing a banking license, does not indicate whether an administrative review procedure is contemplated. In the United States, a decision such as denying an application to establish a bank is

generally reviewable at the agency level under principles of administrative law before judicial involvement is necessary.

J. Article 30

Article 30.1.3 indicates that banks may own real estate. Consideration might be given to limiting such holdings to permitted bank real estate investments, such as for the bank's premises, rather than speculative investments.

PART 3. CENTRAL BANK.

We have focused our recommendations on the provisions applicable to commercial banks, because advice on central banking matters is largely the province of others. Nevertheless, various important matters involving the role and functions of a central bank should be considered, and accordingly we offer certain suggestions.

As a general matter, we would suggest that one statute should cover both the monetary and supervisory functions of Bank of Estonia and another statute should provide for the incorporation and regulation of commercial banks. Accordingly, the Central Bank Law should address matters such as any open market operations of Bank of Estonia and carefully define the relationship of Bank of Estonia to the Republic of Estonia. Although the Central Bank Law states expressly that Bank of Estonia is not responsible for debts of the Republic of Estonia, Article 19 states that Bank of Estonia "shall decide questions of becoming a member of international credit and financial organizations as well as concerning the state debt of the

Republic of Estonia;" these functions are arguably incompatible with the independence of the monetary authority. While it is probable that what was meant was that Bank of Estonia shall represent Estonia at International Monetary Fund or Bank for International Settlements meetings, and possibly negotiations with other countries concerning the state debt, we suggest that it should be the political organs that make decisions as to which international organizations Estonia might wish to join.

Article 3 of the Central Bank Law might be revised so as to grant to Bank of Estonia, despite its independence and self-financing character, sovereign immunity in those cases where it seems desirable to the government to insure that Bank of Estonia cannot be sued without its consent. The present language of Article 3 might make Bank of Estonia vulnerable to lawsuits by private banks for whom it carries out foreign exchange transactions.

Article 19 might be a good place to specify in greater detail Bank of Estonia's supervisory duties, including its duties with respect to international banks. The Basle standards require that a home country supervisory authority must have the practical capability of performing consolidated supervision. This means it must receive consolidated financial and prudential information on the bank's or banking group's global operations; have the reliability of this information confirmed to its own satisfaction by on-site examination or other means, and assess the information as it may bear on the safety and soundness of the bank or banking group; have the capability to prevent corporate affiliations or

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structures that either undermine efforts to maintain consolidated financial information or otherwise hinder effective supervision of the bank or banking group; and have the capability to prevent the bank or banking group from creating foreign banking establishments in particular jurisdictions. Moreover, in order to comply with the Basle standards, the secrecy provision should be amended specifically to authorize the Bank of Estonia to give information to other supervisors.

The Central Bank Law should presumably give Bank of Estonia the authority to supervise the payments system as well as the interbank market. The Law might also include more specific provisions concerning reserve requirements. As presently written, it appears that reserves are viewed as a prudential measure rather than as a monetary tool. We would be happy to provide an explanation of the U.S. mechanism for using reserves to effect monetary policies if requested.

PART 4. CONCLUSION.

The above observations are necessarily somewhat general in nature since a great deal more discussion as to the policies and objectives Estonia desires to pursue in the banking area would be required in order to give comprehensive advice. However, it is hoped that the points made above will provide a basis for consideration of various possible changes in the Bank Law. Should detailed information be desired on any matter discussed above, or on any related matter (for example, the structure of a statute on secured transactions), we would be very

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pleased to provide it. In addition, we will be happy to provide on request a copy of any of the United States statutes referred to above, should this be helpful.

MILBANK, TWEED, HADLEY & MCCLOY

October 22, 1992

APPENDIX: DOCUMENTS

1. Bank Law of the Republic of Estonia, 12/28/89, with amendments of 5/15/91. English and Estonian.
2. Amendments to the Bank Law of the Republic of Estonia, 7/8/92. English and Estonian.
3. Statutes of the Bank of Estonia, 3/15/90, with amendments of 2/27/92. English and Estonian.
4. Telex correspondence from Deutschebank regarding Bank Law and Statutes of the Bank of Estonia, 3/13/92. Translated into English.
5. Estonian Law on Bankruptcy, 6/10/92. English.

BANK LAW OF THE REPUBLIC OF ESTONIA, 12/28/89
AMENDMENTS OF 5/15/91. ENGLISH AND ESTONIAN

UNAUTHORIZED
TRANSLATION

Bank Law of the Republic of Estonia

The present law determines the economic and legal basis for bank activity in Estonia and the role and importance of banks in the development of the national economy where conditions are being set by the market, reflecting increasing commercial relations as well as the continuous development of international financial ties.

In order to extend bank services and improve their quality, the present law creates the preconditions for competition between different banks, supporting customers in their business activities through the procurement and effective use of credit resources.

The law defines the functions of the central bank (Eesti Pank), of commercial banks and other credit institutions.

Chapter I
GENERAL REGULATIONS

Article 1. General Principles

Banks are institutions that carry out bank operations sanctioned by the present law.

Article 2. Bank Operations

2.1. Banks maintain the right to carry out all or some of the following bank operations:

2.1.1 holding bank deposits and extending credit and investing funds;

2.1.2 clearing of accounts for customers or correspondent banks and serving them at the cashdesk;

2.1.3 keeping the current accounts of customers and correspondent banks;

2.1.4 financing capital investments when commissioned to do so by investors or financiers;

2.1.5 issuing and withdrawing currency notes from circulation;

2.1.6 issuing payment documents (cheques, letters of credit, bills of exchange, etc) and carrying out other operations with said documents;

2.1.7 selling and buying securities (shares, bonds, etc.) and carrying out other operations with said securities;

2.1.8 issuing vouchers, guarantees and other documents in the name of a third party which are negotiable;

2.1.9 possessing rights for procuring goods and rendering services, while taking the risk connected with the fulfilment of such operations and related cashing in;

2.1.10 acquiring and leasing equipment, means of transport and other property;

2.1.11 buying foreign currency from and selling it to organizations and citizens;

2.1.12 buying and selling precious metals, natural precious stones and products derived from precious metals and precious stones;

2.1.13 carrying out operations with precious metals in accordance with international banking practice;

2.1.14 rendering consultation and intermediation services.

2.2. Upon permission from Eesti Pank and within the confines of the central bank mandate, banks may carry out other operations. Banking operations with foreign currency, precious metals, natural precious stones and products from precious metals and precious stones are to be carried out only under the guidelines established by Eesti Pank.

2.3. Currency notes are issued and withdrawn from circulation only by Eesti Pank.

2.4. The banking operations mentioned in the present article with the legal tender of the Republic of Estonia as well as with foreign currency are carried out in accordance with regulations established by Eesti Pank.

2.5. Banks carry out the operations listed in the present article within the confines established in their statutes.

2.6. The banking operations mentioned in articles 2.1.1 and 2.1.2 of the present law are considered invalid if they are carried out by unauthorized persons.

Article 3. The Name of Credit Institutions

Only a legal persons registered as a bank according to the provisions of Article 18 of the present law can use the word "bank" in its name or in advertising. The name of a bank must include the word "bank".

Article 4. Defining the Responsibility of Republic of Estonia and of the Banks

Banks are not responsible for the obligations of the Republic of Estonia and Republic of Estonia is not responsible for the obligations of banks, except in cases mentioned in the present law and in other cases if Republic of Estonia assumes such a responsibility.

Chapter II THE BANKING SYSTEM OF ESTONIA

Article 5. Components of the Integral Banking System

5.1. The banking system of Estonia comprises Eesti Pank, commercial banks and other credit institutions.

5.2. Commercial banks can open branches and agencies by previously notifying Eesti Pank of their intentions.

5.3. Banks can form unions, associations and other organizations. The aim of those organizations and cooperation contracts between banks cannot have a monopoly of market and cannot limit the freedom of competition.

5.4. The regulations of the present law are applied to the founding, the operation and the liquidation of any and all banks, bank branches or agencies in the Republic of Estonia.

Article 6. Legal Basis of Bank Activity

6.1. Banks and other credit institutions are guided in their activities by the laws of Republic of Estonia, by other decisions

made by the supreme state authorities and by their own statutes. In addition to these, commercial banks are also guided by official standards established by Eesti Pank within the confines of its competence.

6.2. Banks do not have the right to carry out requests or directives that do not correspond to the legislation of Republic of Estonia and to their own statutes.

1. EESTI PANK

Article 7. The Statute of Eesti Pank

7.1. Eesti Pank is an independent institution that gives an account of its activities to the supreme state authority.

7.2. The President and the Board of Eesti Pank are appointed by the supreme state authority of Republic of Estonia for a five-year period. By their position, President of Eesti Pank and Minister of Finance are members of the Board of Eesti Pank. Neither President of Eesti Pank nor Minister of Finance can be the Chairman of the Board of Eesti Pank. The Chairman is elected by the members of the Board and approved by the Supreme Council of Republic of Estonia.

7.3. The functions, rights and obligations of Eesti Pank are determined by its statute, which is subject to legislative approval.

7.4. Before adopting the decisions outlined in articles 18, 19, 28 35 and 49 of the present law, Eesti Pank shall consult with commercial banks and the unions and associations formed by them.

7.5. Eesti Pank shall make public its report on its activities and financial statement.

Article 8. Main Functions of Eesti Pank

8.1. The main functions of Eesti Pank are:

8.1.1 to elaborate the economic strategies of Republic of Estonia in the area of currency circulation, crediting, payments and foreign exchange as well as to be responsible for carrying the above out within the confines of its competence;

8.1.2 to manage the monetary and credit system of Republic of Estonia;

8.1.3 to ensure stable currency circulation and purchasing power for the legal tender of Republic of Estonia as well as to determine the rate of exchange of the national currency in relation to foreign currencies.

8.2. While fulfilling its tasks, Eesti Pank is obliged to support the general economic policy of Republic of Estonia.

8.3. Eesti Pank advises the Estonian Government and informs the Estonian Government about essential questions of banking policy importance. Making important financial-political decisions the Estonian Government shall listen to the opinion of Eesti Pank.

Article 9. Eesti Pank as the Central Issuer of Currency

9.1. Eesti Pank is a currency issuing centre that regulates the amount of cash and non-cash monetary units in circulation.

9.2. According to the decision of the supreme state authority, properties of Republic of Estonia are allocated to Eesti Pank for ensuring the stabilization of currency circulation. These properties comprise the income of

privatization of state property, shares of state joint stock companies and other assets belonging to Republic of Estonia. Privatization of state properties is organized by an Estonian republican organ the activities of which are directed by a council. Not less than half of the members of the above council are appointed by Eesti Pank. - State Property Board (i.e. bd of State Property Dept.)

Article 10. Participation of Eesti Pank in Executing the State and Local Budgets

10.1. Eesti Pank together with the Ministry of Finance of Republic of Estonia establishes the order for carrying out operations in order to fulfill the state and local budgets by banks and regulates state debts together with the Ministry of Finance of Republic of Estonia.

10.2. The limits of the state debt are established by the supreme republican state authority.

Article 11. Foreign Economic Functions of Eesti Pank

11.1. Eesti Pank, according to its statute, represents the interests of Republic of Estonia in its relations with the central banks of other countries, with international banks and with other institutions of finance and credit. In doing so it has the right:

11.1.1. to conclude correspondent and other contracts with them;

11.1.2. to receive credit from them and to give them credit;

11.1.3. to deposit their money in accounts and leave its own free means with them;

11.1.4. to take vouchers;

11.1.5. to give guarantees to legal persons of foreign countries and to international organizations, as far as monetary obligations are concerned;

11.1.6. to carry out other operations in accordance with its statute.

11.2. Eesti Pank regulates the taking and usage of foreign credits taken by legal personalities registered in Republic of Estonia from foreign banks and other financial and credit institutions.

2. COMMERCIAL BANKS AND OTHER CREDIT INSTITUTIONS

Article 12. Commercial Banks and other Credit Institutions.

12.1. A commercial bank is a credit institution which, on the basis of contracts concluded with legal persons and private individuals, involves and invests monetary savings and credits, serves customers and makes payments in the amount established by Eesti Pank. According to its statute, a commercial bank has also the right to carry out any other banking operations.

12.2. Other credit institutions comprise savings unions, credit unions and specialized credit institutions. Other credit institutions are subject to the regulations established for banks in the present law with the exception of special conditions mentioned in Articles 12.3 and 12.4.

12.3. A savings union is a credit institution investing the monetary means of its members and private individuals on the basis of contracts. According to its statute, a savings union can carry out all other banking operations, with the exception of

giving blanko-credits. (continued)

12.4. A credit union is a credit institution which invests credits on the basis of contracts with legal persons. A credit union carries out banking operations according to its statute and licence of operation. A credit union cannot accept savings from private individuals.

12.5. Conditions for founding and operation of specialized credit institutions are established by Eesti Pank.

Article 13. Statutes of Commercial Banks

13.1. Commercial banks function on the basis of the present law, their statutes and other laws of Republic of Estonia.

13.2. The statute of a bank is to contain:

13.2.1. the name and location (postal address) of the bank;

13.2.2. a list of bank operations carried out by the bank;

13.2.3. a list of funds formed by the bank and the initial size of its statutory fund;

13.2.4. the reference to the fact that the bank is a legal person functioning on the basis of self-financing;

13.2.5. the structure and functions of the administrative bodies of the bank;

13.2.6. the order of founding the bank and of ending its activity.

13.3. The statute may include other regulations connected with the specific activity of the bank. Amendments to the statute are introduced in connection with changes in the legislation of Republic of Estonia that regulates the activity of commercial banks.

Article 14. The Taxation of Commercial Banks

Commercial banks pay taxes in accordance with the law on taxation of Republic of Estonia.

Article 15. Formation of Statutory Funds for Commercial Banks

The statutory funds of commercial banks are formed from founder and partner contributions.

Article 16. Material Responsibility of Commercial Banks

Commercial banks are responsible for their obligations with all the property they possess. They are not responsible for the obligations of their founders and partners and the founders and partners are not responsible for the obligations of the banks, unless a different arrangement has not been established in their statutes.

Article 17. Partners of Commercial Banks

The partners of commercial banks are legal personalities and private individuals who participate in them with their own means.

Article 18. Founding of Commercial Banks and other Credit Institutions

Commercial banks and other credit institutions are founded and registered according to the Law on Enterprise and other legislative acts of Republic of Estonia. A commercial bank or a credit institution is registered and can operate only if has

obtained a state licence. Licences for banks and other credit institutions are issued by Eesti Pank according to the regulations established by Eesti Pank.

Article 19. Foreign Founders and Partners of Commercial Banks

Participation of foreign founders and partners in the founding and activity of commercial banks is determined by the laws of Republic of Estonia.

Article 20. Grounds for Refusal to Issue a Licence

20.1. Eesti Pank may refuse to issue a licence to a commercial bank or a credit institution in the following cases:

20.1.1. the foundation documents do not correspond to the legislation of Republic of Estonia;

20.1.2. the financial state of the founders is uncertain according to the opinion of an auditing organization.

20.2. The founder may contest the decision of Eesti Pank to refuse to issue a licence. All argument shall be considered in court.

Article 21. Grounds for Cancelling a Licence

21.1. Eesti Pank may cancel a licence in the following cases:

21.1.1. if false data are discovered on the basis of which the respective licence was issued;

21.1.2. if the beginning of activity is delayed for more than a year from the date of issue;

21.1.3. if regulations of the present law are violated with respect to property security or protection of the creditor interests, pointed out in Article 28 of the present law;

21.1.4. if operations are carried out that go beyond the bounds of legal capacity as defined in the statute of the commercial bank or the credit institution or in the legislation of Republic of Estonia.

21.1.5. if false or misleading data or reports are issued on purpose.

21.1.6. if the professional skills of the head or the chief accountant of a commercial bank or a credit institution are not appropriate to their positions.

21.2. The decision of cancelling a licence may be contested in court.

Article 22. Reorganizing or Terminating the Activity of a Commercial Bank

In addition to the cases mentioned in other articles of the present law, a commercial bank is reorganized (uniting, joining, division, separation, reorganization) or its activity is terminated (liquidation) in accordance with the statute of the bank.

Chapter III CREDIT AND FINANCIAL REGULATIONS

Article 23. Regulation of Credit and Currency Circulation

Eesti Pank regulates the amount of currency in circulation by:

23.1. changing the amount of credit given to commercial banks;

- 23.2. buying and selling bonds and foreign currency;
23.3. changing the norms of obligatory reserves invested in Eesti Pank by commercial banks;
23.4. issuing cash;
23.5. changing the rates of interest for its credit;
23.6. other means allowed by legislation.

Article 24. Payments between Banks

- 24.1. For payments between banks Eesti Pank opens payment (correspondent) and other accounts for commercial banks.
24.2. Commercial banks may make payments also through correspondent accounts or payment accounts opened by different commercial banks.

Article 25. Credit and Payment Transactions of Commercial Banks

Commercial banks give credit to and effect payments for the benefit of other banks within the limits of the remainder of the means they have in their payment (correspondent) accounts opened in Eesti Pank and in other banks. In case of the insufficient financial means on those accounts, a commercial bank may commission credit resources from its customers, from other commercial banks on a contract basis, or from Eesti Pank in accordance with Article 49 of the present law, in order to carry out credit or payment transactions.

Article 26. Rates of Interest Paid by Commercial Banks

The rates of interest paid in the operations of commercial banks are established by the banks independently.

Article 27. Regulation of the Level of Interest Rates

Eesti Pank regulates the level of interest rates paid on the credit operations of commercial banks by using all the means singled out in Article 23 of the present law.

Chapter IV COLLATERAL SECURITY OF A BANK AND PROTECTION OF THE INTERESTS OF CREDITORS

Article 28. Economic Norms Established for Commercial Banks and Other Credit Organizations

- 28.1. For guaranteeing the existence of property collateral for a bank and protection of the interests of creditors, commercial banks and other credit institutions follow the economic norms below, established by Eesti Pank:
- 28.1.1. a minimum statutory fund;
 - 28.1.2. a relation of the bank's own means to the total of its assets;
 - 28.1.3. a minimal relation of liquid assets to bank debts;
 - 28.1.4. the size of obligatory reserves to be invested in Eesti Pank for a regulating fund on credit resources within the bank system;
 - 28.1.5. the maximum risk per one borrower;
 - 28.1.6. the norms of sums set apart from any profit for a fund of banking system for ensuring the savings of population as well as the bank's own reserve fund;

28.1.7. the relations of shares of enterprises owned by commercial banks to the statutory fund of the commercial bank.

28.2. The norms set by Eesti Pank are common for banks or other credit institutions of similar type.

Article 29. The Bank's Own Means

29.1. The bank's own means include:

29.1.1. a statutory fund;

29.1.2. reserves in accordance with Article 37 of the present law and other funds that are formed from profits and contained in the balance of the bank;

29.1.3. undivided profit or means received from distributing shares to shareholders and partners free of charge or from increasing the paid-in capital;

29.1.4. loan obligations without a guarantee issued by the bank in a total amount not exceeding half of the statutory fund.

29.2. Taking into consideration the relation of the bank's own means to the sum of its assets, the statutory fund is decreased by the value of the shares acquired by the bank.

Article 30. Bank Assets

30.1. Bank assets are:

30.1.1. loans given to legal personalities or single individuals;

30.1.2. investments in ~~bonds securities~~

30.1.3. real estate investments;

30.1.4. other assets.

30.2. When figuring out the boundary relation between the bank's own means and the sum total of its assets, different categories of assets and conditional non-balance sheet obligations equal with assets, are taken into consideration on the basis of the coefficient established by Eesti Pank.

Article 31. Conditional Non-Balance Sheet Obligations of a Bank

When figuring out the bank's own means and the sum total of its assets, the bank's conditional (or eventual) non-balance sheet obligations are also taken into consideration. The conditional obligations of the bank are considered assets as determined by Eesti Pank.

Article 32. Minimal Relation of Liquid Assets to the Debts of the Bank

32.1. The liquid assets are:

32.1.1. the cash of the bank;

32.1.2. means obtainable from Eesti Pank;

32.1.3. promissory notes exchangeable for cash that have been issued or guaranteed by countries, equal to Republic of Estonia with regard to credit risk, by local authorities, as well as by credit institutions subordinated to state review of Republic of Estonia or of other countries.

32.1.4. the net debts of the commercial banks of Republic of Estonia and other countries that are due in less than three months.

32.2. To ensure the solvency of a bank, liquid bank assets must form at least 10% of its debts, whereas means received from the state for special use and debts to Eesti Pank shall be ~~discounted~~

32.3. The liquid assets pointed out in article 32.1. of the

present law do not include the assets from credit and financial institutions of whose capital more than a half belongs to the bank.

Article 33. Range of Minimal Reserves

33.1. The range of minimal reserves is established for all commercial banks and other credit institutions as a ~~percentage~~ ^{percentage} of their total reserves or the growth of the latter.

33.2. Banks and other credit institutions keep their obligatory reserves with Eesti Pank.

Article 34. Maximum Rate of Risk per One Borrower

34.1. The maximum rate of risk per one borrower is established as a certain percentage of the total of the bank's own capital in which the character of the borrowers activity and its solvency are taken into consideration.

34.2. In calculating the maximum rate of risk per one borrower, the concept of risk involves the total of all investments and credit given to the borrower as well as all guarantees, vouchers and other obligations issued on its behalf.

Article 35. Profit Sums Set Aside for the Bank Fund for Securing Citizens' Deposits

For insuring citizens' deposits in case of commercial bank insolvency, banks, before payments, set aside part of their profits into a Bank Fund in accordance with the norms established in the budget. The procedure for establishing and using the fund shall be determined by Eesti Pank.

Article 36. Rights of Eesti Pank upon Violation of Established Norms by Commercial Banks

36.1. In case a commercial bank has violated the norms established in article 28 of the present law, Eesti Pank shall determine the deadlines for making amendments for the violations.

36.2. In case of a continuous violation of norms and neglecting the prescriptions, (including the conditions and dates set by Eesti Pank for amending the violations) which jeopardizes the creditors interests, Eesti Pank may raise before the institutions which founded the bank or before the partners of a commercial bank the question of:

36.2.1. applying measures for putting the bank on a sound basis;

36.2.2. reorganizing the bank;

36.2.3. liquidating the bank;

36.3. With regard to commercial banks that violate the norms established in Article 28, Eesti Pank can apply economic sanctions.

36.4. Eesti Pank can also cancel the licence of a commercial bank in case circumstances described in the present article occur.

Article 37. Reserves for Covering Possible Losses

From their profits banks shall maintain reserves to cover possible losses. Reserves that are not connected with loan filanses or an indebtedness existing on the day of their

foundation belong to the bank's own capital and are formed from profits before clearing accounts in the budget.

Article 38. Bank Secrecy

38.1. Banks shall guarantee their customers and correspondents confidentiality in all operations, accounts and deposits. All bank employees must keep confidential information about economic situation and business secrets that they receive from their customers and other persons in the course of their work.

38.2. Documents about the operations of legal persons and single individuals as well as about their accounts are given to:

38.2.1. legal persons and single individuals themselves;

38.2.2. courts and arbitration authorities in cases established by law;

38.2.3. financial authorities in taxation questions.

38.3. Documents about individuals' accounts and deposits are given, besides to the customers themselves and to their representatives, to courts and investigation organs within the confines of their jurisdiction, in accordance with established legislation.

38.4. Documents about accounts and ~~and~~ deposits, in case of death of their owner, are given to the persons mentioned by the owner of the account or deposit in his will made for the bank, as well as to state notarial offices and consular representations of foreign countries.

Article 39. The Seizure of and Claims to Financial Assets and Other Valuables Deposited in a Bank

39.1. The financial assets and other valuables of legal persons and single individuals kept in a bank may be seized only through a court order or through warrants issued by investigative and arbitral authorities. The financial assets and other valuables of legal persons and single individuals held in banks may be claimed only through court order or written orders from arbitral authorities or through other writs of execution: as well as on the demand of financial authorities and other organizations in cases determined by the legislation of Republic of Estonia.

39.2. The financial assets and other valuables of Soviet, foreign and international organizations deposited in a bank may be seized and claimed only on the basis of court and arbitral decisions in accordance with established legislation.

39.3. The financial assets and other valuables of single individuals held in a bank may be seized only:

39.1. on the basis of decisions by the courts and investigative authorities in criminal cases within their jurisdiction and upon considering matters of confiscating property in accordance with the law;

39.3.2. on the basis of court decisions concerning civil claims resulting from criminal cases (except sum which equals the triple monthly salary (pension) received by the defendant during the calendar year that preceded the seizure), cases of exacting alimony (when there is no salary or other property that can be claimed) and from cases of dividing the common deposited property of spouses.

39.4. The financial assets and other valuables of single

individuals held in a bank may be exacted on the basis of a court decision in a criminal case, or on the basis of a civil claim resulting from a criminal case, or on the basis of a court decision for exacting alimony (when the salary or other property that can be claimed is missing) or on the basis of a decision by Judge or on the basis of a court decision made on dividing the common deposited property of spouses.

39.5. The financial assets and other valuables of single individuals held in a bank may be confiscated on the basis of a property confiscation enactment adopted in accordance with the law or on the basis of the court decision in a criminal case.

39.6. The financial assets and other valuables of legal persons and single individuals held in a bank are freed from seizure by the authority who seized them.

Chapter V SERVING CUSTOMERS IN BANKS

Article 40. The Contractual Character of Bank-Customer Relations

40.1. Relations between a bank and its customers have a contractual character.

40.2. The customers themselves choose the bank for credit and accountancy services.

40.3. Commercial banks may or may not take a customer for credit or accountancy services.

Article 41. Guaranteeing the Returnability of Credit

41.1. For guaranteeing the timely return of credit, banks accept collateral, guarantees, vouchers and any other obligations valid in banking practice.

41.2. Banks may make decisions about giving credit without a guarantee (blanco credit).

Article 42. Collateral

42.1. Banks may accept for collateral any commercial-financial assets that have not already been used as collateral, goods produced by the customers, bonds, documents of good distribution and other valueables. The commercial-financial assets that are held abroad and which the banks have taken as collateral for credit in foreign economic operations, must be insured at the customer's own expense.

42.2. Buildings, equipment and other property belonging to the fixed capital may be accepted as collateral in case the customer bears responsibility for all the obligations of his property, in accordance with established legislation.

42.3. The procedure for registering collateral shall be determined by the government of Republic of Estonia.

42.4. In case of a long-term loan debt, with more than 60 days of delay in payment, and the collateral of which are commercial-financial assets, the bank, after satisfying pretensions on salary and budgetary requirements for taxes, reserves the right to use the receipts from sale of the property put up by the enterprise for eliminating the indebtedness.

42.5. The property put up in a bank is sold on the instructions of the bank without involvement of court or any arbitration.

42.6. The means received from the sale of the property put up in the bank shall be used for eliminating the indebtedness, whereas the bank has a prerogative before the claims of other legal persons and single individuals.

Article 43. The Forms of Clearing Accounts

Banks may clear accounts in the way allowed by Eesti Pank.

Article 44. Proclaiming the Borrower Insolvent

Borrowers, who have not fulfilled their obligations with regard to timely return of the money received from the bank, may be proclaimed insolvent by the bank by informing its creditors, the executive bodies of the local government and the partners of the joint venture in the activity of which organizations from Estonia, the Soviet Union and foreign countries participate. A respective announcement shall be published in newspapers within 7 days from the moment the borrower is proclaimed insolvent.

Article 45. Measures to be Taken with Regard to an Insolvent Borrower

45.1. Upon the suggestion of the banks, the following measures may be taken with regard to an insolvent borrower:

45.1.1. the transfer of the operative management of the borrower to an administration appointed by the creditor bank;

45.1.2. reorganization;

45.1.3. liquidation together with the realization of the collateral in accordance with established legislation.

Article 46. Paid Services Rendered by Banks

Banks render paid services to customers and to each other on a contractual basis with regard to the operations described in Article 2 of the present law.

Chapter VI

FOREIGN ECONOMIC ACTIVITY OF BANKS

Article 47. Checking the Indebtedness of Banks to Foreign Creditors

Eesti Pank checks the indebtedness of banks to foreign creditors in accordance with the established legislation of Republic of Estonia.

Article 48. Foreign Currency Funds Held by Banks

Banks use foreign currency and form funds of foreign currency in accordance with the established legislation.

Chapter VII

RELATIONS BETWEEN BANKS

Article 49. Deposit and Credit Operations Between Banks

49.1. On a contractual basis commercial banks may involve and invest means with one another in the form of deposit and credit, as well as carry out other reciprocal operations as determined in their statutes.

49.2. In case of insufficient resources for crediting customers and fulfilling their obligations, commercial banks may turn to Eesti Pank for credit. The procedure for carrying out such credit operations shall be determined by Eesti Pank.

Chapter VIII PRIVATE INDIVIDUALS' DEPOSITS

Article 50. Private Individuals' Deposits as Credit Resources for Commercial Banks

50.1. Commercial banks may engage the financial resources of citizens for use as credit resources.

50.2. Banks accept deposits by giving the depositor a deposit statement.

Article 51. Depositors

51.1. Depositors may be single individuals regardless of their citizenship.

51.2. Depositors may command deposits, receive income from the deposits either through a percentage or any other form offered by the bank and make payments without cash.

51.3. The procedure for controlling deposits invested in commercial banks shall be determined by the bank's statute and by the deposit contract signed by the bank and the customer.

Article 52. The Rights of Minors with Regard to Deposits

52.1. A depositor may also be a minor.

52.2. A minor, who has deposited money in his/her name, can use the deposit independently.

52.3. Money deposited in the name of a minor by another person are controlled:

52.3.1 by the parents or legal representatives of the minor, until the minor is 15 years old;

52.3.2. by the minor himself/herself with the consent of his parents or legal representatives, once the person in question is 15 years old.

Article 54. Testamentary Arrangement of a Depositor

54.1. The depositor has the right to make testamentary arrangements for paying out his/her deposit in case of his/her death, to any person, organization or state.

54.2. In the cases mentioned in Article 54.1. the deposit does not belong to the inheritance. Banks pay out such deposits in accordance with the established legislation of Republic of Estonia.

54.3. A deposit for which no testamentary arrangements have been made, shall be paid out by banks in case of the depositor's death to heirs in accordance with the established legislation of Republic of Estonia.

Article 55. Releasing Reports and Publishing the Yearly
Balance as well as Disclosing Profit and Loss
Accounts

55.1. Banks shall issue reports in accordance with established procedures determined by the laws in force.

55.2. Banks shall publish their yearly balance sheet and profit and loss account in the form and on the date determined by Eesti Pank.

Chapter X
INSPECTION OF COMMERCIAL BANKS

Article 56. Inspection Functions of Eesti Pank

56.1. Eesti Pank shall supervise commercial banks as to the maintenance of regulations established in accordance with the present law as well as to the correct implementation of legislative acts of the Republic of Estonia and of Eesti Pank.

56.2. In order to carry out the functions described in Article 56.1. Eesti Pank may organize complete or selective audits of operations conducted by commercial banks, generally not more than once a year. The Board of Eesti Pank may decide to conduct inspections more often.

56.3. The activities of commercial banks shall be inspected by the auditing department of Eesti Pank or by some other inspection or auditing commission on the instructions of Eesti Pank.

56.4. A commercial bank must submit to the organization conducting the audit a yearly balance, plans, reports or any other documents necessary for the audit.

A.Rüütel
Chairman
Presidium of the Supreme
Council
Republic of Estonia

A.Almann
Secretary
Presidium of the Supreme
Council
Republic of Estonia

E E S T I V A B A R I I G I
P A N G A S E A D U S

Käesoleva seadusega määratakse kindlaks pankade tegevuse majanduslikud ja õiguslikud alused Eestis ning nende koht ja osatähtsus vabariigi rahvamajanduskompleksi arengus kaubalis-rahaliste suhete aktiivse kasutamise ja turu funktsioneerimise ning rahvusvaheliste majandussidemete arendamise tingimustes.

Fangateenuste laiendamise ja nende kvaliteedi parandamise huvides loob käesolev seadus eeldused erinevate pankade konkurentsiks klientide kaasamisel äritegevusse, krediidiressursside hankimisel ja nende efektiivsel kasutamisel.

Seadus piiritleb keskpanga (Eesti Panga), kommertsbankade ja muude krediidi-asutuste funktsioonid.

I peatükk. ÜLDSÄTTED

Paragrahv 1. Panga mõiste

Pank on asutus, kes sooritab käesolevas seaduses ettenähtud pangaoperatsioone.

Paragrahv 2. Pangaoperatsioonid

Pangaoperatsioonid on:

- 1) rahaliste hoiuste ja krediidi kaasamine ja mahutamine,
- 2) klientide ja korrespondentbankade ülesandel arvelduste tegemine ja nende kassaline teenindamine,
- 3) klientide ja korrespondentbankade kontode pidamine,
- 4) kapitaalmahutuste finantseerimine investeeritavate vahendite valdajate või kasutajate käsundi põhjal,
- 5) rahamärkide käibelelaskmine ja nende käibelt kõrvaldamine,
- 6) maksedokumentide (tšekid, akreditiivid, vekslid jt.) väljaandmine ning muud nendega teostatavad operatsioonid,
- 7) väärtpaberite (aktsiad, obligatsioonid jt.) müük, ost ja muud nendega sooritatavad operatsioonid,
- 8) kolmandate isikute eest tagatiskirjade, garantiide ja muude kohustiste andmine, mis näevad ette täitmise rahalises vormis,
- 9) kaupade tarnimisest ja teenuste osutamisest, tuleneva nõudeõiguse omandamine, selliste nõuete täitmisega seotud riski enda peale võtmine ning nende nõuete inkasseerimine (faktoring),
- 10) seadmete, transpordivahendite ja muu vara soetamine ja üleandmine rendi tingimustel (leasing).

- 11) välisvaluuta ostmine organisatsioonidelt ja kodanikelt ning selle müük neile,
- 12) väärismetallide, looduslike vääriskivide ning väärismetallist ja vääriskividest toodete ost ja müük,
- 13) operatsioonid väärismetallidega vastavalt rahvusvahelisele pangapraktikale,
- 14) konsultatsiooni- ja vahendusteenuste osutamine.

(2) Pank võib sooritada muid operatsioone Eesti Panga loal, mis antakse tema pädevuse piires. Pangaoperatsioonid välisvaluuta, väärismetallide, looduslike vääriskivide ning väärismetallist ja vääriskividest toodetega toimuvad ainult Eesti Panga poolt kehtestatud korras.

(3) Rahamärke laseb käibele ja kõrvaldab käibelt ainult Eesti Pank.

(4) Käesolevas paragrahvis loetletud pangaoperatsioonide sooritamise korra nii Eesti Vabariigi kui välisriikide valuutas kehtestab Eesti Pank vastavalt Eesti Vabariigi seadustele.

(5) Pank sooritab käesolevas paragrahvis ettenähtud operatsioone oma põhikirjas kehtestatud piires.

(6) Käesoleva paragrahvi lõike 1 punktides 1 ja 2 ettenähtud pangaoperatsioonid loetakse kehtetuks, kui neid sooritavad selleks volitamata isikud.

Paragrahv 3. Krediidiasutuse nimetus

Sõna "pank" võib oma nimetuses või reklaamiks kasutada ainult käesoleva seaduse § 18 ettenähtud tingimustel pangana registreeritud juriidiline isik. Panga nimetus peab sisaldama sõna "pank".

Paragrahv 4. Eesti Vabariigi ja pankade vastutuse piiritlemine

Pangad ei vastuta Eesti Vabariigi kohustiste eest ja Eesti Vabariik ei vastuta pankade kohustiste eest, välja arvatud käesolevas seaduses ettenähtud juhud ja muud juhud, kui Eesti Vabariik võtab endale sellise vastutuse.

II peatükk. EESTI PANGASÜSTEEM

Paragrahv 5. Ühtse pangasüsteemi koostisosad

(1) Eesti pangasüsteemi moodustavad Eesti Pank, kommertspangad ja muud krediidiasutused.

(2) Kommertspangad võivad avada filiaale ja esindusi, teatades sellest eelnevalt Eesti Pangale.

(3) Pangad ja muud krediidiasutused võivad moodustada liituseid ja muid organisatsioone. Nende organisatsioonide tegevuse ega pankadevaheliste koostöölepingute eesmärgiks ei tohi olla turu monopoliseerimine ja konkurentsivabaduse piiramine".

(4) Käesoleva seaduse sätteid rakendatakse, mis tahes pankade, nende filiaalide ja esinduste asutamise, tegevuse ja tegevuse lõpetamise suhtes Eesti Vabariigis

Paragrahv 6. Panga tegevuse õiguslik alus

(1) Pangad ja muud krediidasutused juhivad oma tegevuses Eesti Vabariigi seadustest, Eesti Vabariigi kõrgeima riigivõimuorgani muudest otsustest oma põhikirjast ning Eesti Panga poolt tema pädevuse piires väljaantud normatiivaktidest".

(2) Pankadel ei ole õigust täita juhiseid ja nõudeid, mis ei vasta Eesti Vabariigi seadusandlusele ja oma põhikirjale.

1. Eesti Pank

Paragrahv 7. Eesti Panga staatus

(1) Eesti Pank on iseseisev asutus, kes annab oma tegevusest aru Eesti Vabariigi kõrgeima riigivõimuorgani ees.

(2) "Eesti Panga presidendi ja nõukogu nimetab viieks aastaks Eesti Vabariigi kõrgeima riigivõimuorgan. Ametikoha järgi kuuluvad Eesti Panga nõukogusse Eesti Panga president ja Eesti Vabariigi rahandusminister. Ei Eesti Panga president ega Eesti Vabariigi rahandusminister või olla Eesti Panga nõukogu esimees". Eesti Panga nõukogu esimehe valivad nõukogu liikmed ja ta nimetatakse ametisse Eesti Vabariigi Ülemnõukogu poolt.

(3) Eesti Panga funktsioonid, õigused ja kohustused määratakse kindlaks tema põhikirjas, mille kinnitab Eesti Vabariigi kõrgeim riigivõimuorgan.

(4) "Eesti Pank konsulteerib enne käesoleva seaduse paragrahvides 28, 35 ja 49 nimetatud otsuste vastuvõtmist kommertspankade ja nende liitudega".

(5) Eesti Pank avaldab oma bilansi ja tegevusaruande.

Paragrahv 8. Eesti Panga põhiülesanded

(1) Eesti Panga põhiülesanded on:

- 1) Vabariigi majandusstrateegia väljatöötamine raharingluse, krediteerimise, arvelduste ja valuutasuhete valdkonnas ning selle ellurakendamise tagamine vastavalt oma pädevusele,
- 2) vabariigi raha- ja krediidiüsteemi juhtimine,
- 3) stabiilse raharingluse ja Eesti Vabariigi valuuta ostuvõime tagamine ning vahetuskursi määramine välisriikide valuuta suhtes,
- 4) pankade tegevuse reguleerimine Eesti Vabariigi territooriumil.

(2) Eesti Pank on kohustatud oma ülesandeid täites toetama Eesti Vabariigi üldist majanduspoliitikat.

(3) Eesti Pank annab Eesti Vabariigi Valitsusele nõu ja informeerib Eesti Vabariigi Valitsust olulistest pangapoliitilise tähtsusega küsimustes. Tähtsamate rahandus-poliitiliste otsuste tegemisel kuulab Eesti Vabariigi Valitsus ära Eesti

Paragrahv 9. Eesti Pank kui Eesti Vabariigi emissioonikeskus

(1) Eesti Pank on Eesti Vabariigi emissioonikeskus, kes reguleerib sularaha- ja sularahata käibes olevate rahaühikute hulka.

(2) "Raharingluse stabiilsuse tagamiseks antakse Eesti Vabariigi kõrgeima riigivõimuorgani otsusel Eesti Panga käsutusse Eesti Vabariigi omanduses olevat vara, selle hulgas sissetulekuid riigi vara erastamisest, riigiaktsiaseltside aktsiaid ja muid Eesti Vabariigile kuuluvaid aktiivaid. Riigile kuuluva vara erastamist korraldab Eesti Vabariigi Valitsuse organ, kelle tegevust juhib nõukogu. Nimetatud nõukogu koosseisust vähemalt poole nimetab Eesti Panga nõukogu".

Paragrahv 10. Eesti Panga osavõtt riigieelarve ja kohalike eelarvete täitmisest

(1) Eesti Pank kehtestab koos Eesti Vabariigi Rahandusministeeriumiga riigieelarve ja kohalike eelarvete täitmise operatsioonide sooritamise korra pankades ning reguleerib koos Eesti Vabariigi Rahandusministeeriumiga riigivõlga".

(2) Riigivõla piirmäärad kehtestab Eesti Vabariigi kõrgeim võimuorgan.

Paragrahv 11. Eesti Panga välismajanduslikud funktsioonid

(1) Eesti Pank esindab vastavalt oma põhikirjale Eesti Vabariigi huve suhetes teiste riikide keskpankadega, rahvusvahelistes pankades ning teistes rahandus- ja krediidiorganisatsioonides. Seejuures on tal õigus:

- 1) sõlmida nendega korrespondent- ja muid lepinguid,
- 2) saada nendelt ja anda nendele laene;
- 3) võtta nendelt raha hoiule ja kontodele ning paigutada vaba raha nende kontodele,
- 4) võtta endale tagatiskirju,
- 5) anda rahaliste kohustiste garantiisid välisriikide juriidilistele isikutele ja rahvusvahelistele organisatsioonidele,
- 6) sooritada muid operatsioone vastavalt oma põhikirjale.

(2) Eesti Pank kehtestab Eesti Vabariigis registreeritud juriidiliste isikute välisriikide pankadelt ning teistelt rahandus- ja krediidiorganisatsioonidelt laenude võtmise ning kasutamise korra".

2. KOMMERTSPANGAD JA MUUD KREDIIDIASUTUSED

Paragrahv 12. Kommertspangad ja muud krediidiasutused

(1) Kommertspank on krediidiasutus, mis juriidiliste ja üksikisikutega sõlmivatate lepingute alusel kaasab ja mahutab rahalisi hoiuseid ja krediite, teostab klientide kassalist teenindamist ning sooritab Eesti Panga poolt määratud ulatuses arveldusi. Kommertspangal on õigus sooritada vastavalt oma põhikirjale ka kõiki muid pangaoperatsioone.

(2) Muud krediidasutused on hoiuühistud, krediidiühistud ja spetsialiseeritud krediidasutused. Muudele krediidasutustele laienevad kõik käesoleva seadusega pankadele kehtestatud sätted välja arvatud käesoleva paragrahvi 3. ja 4. lõikes märgitud eritingimused.

(3) Hoiuühistu on oma liikmeks clevatelt ja teistelt üksikisikutelt lepingute alusel kaasatud rahalisi hoiuseid mahutav krediidasutus. Hoiuühistu võib vastavalt oma põhikirjale sooritada kõiki muid pangaoperatsioone, välja arvatud blankokrediitide andmine.

(4) Krediidiühistu on juriidiliste isikutega sõlmitavate lepingute alusel rahalisi kredite kaasav ja mahutav krediidasutus. Krediidiühistu sooritab pangaoperatsioone vastavalt oma põhikirjale ja tegevuslitsentsile. Krediidiühistu ei tohi vastu võtta üksikisikutelt hoiuseid.

(5) Spetsialiseeritud krediidasutuste asutamise ja tegutsemise tingimused kehtestab Eesti Pank.

Paragrahv 13. Kommertspankade põhikirjad

(1) Kommertspangad tegutsevad käesoleva seaduse, oma põhikirja ja teiste Eesti Vabariigi seaduste alusel.

(2) Panga põhikirjas peab sisaldama:

- 1) panga nimetus ja asukoht (postiaadress),
- 2) panga poolt sooritatavate pangaoperatsioonide loetelu,
- 3) panga poolt moodustatavate fondide loetelu ja põhikirjafondi esialgne suurus,
- 4) viide sellele, et pank on juriidiline isik ja tegutseb täieliku isemajandamise alusel,
- 5) panga juhtorganite struktuur ja funktsioonid,
- 6) panga moodustamise ja tema tegevuse lõpetamise kord.

(3) Põhikirja võib võtta ka muid panga tegevuse iseärasustega seotud sätteid Põhikirja viiakse sisse muutused seoses kommertspankade tegevust reguleeriva Eesti Vabariigi seadusandluse muutumisega.

Paragrahv 14. Kommertspankade maksustamine

Kommertspangad maksavad makse vastavalt Eesti Vabariigi maksuseadusele.

Paragrahv 15. Kommertspankade põhikirjafondide moodustamine

Kommertspankade põhikirjafondid moodustuvad asutajate ja osanike maksetest.

Paragrahv 16. Kommertspankade varaline vastutus

Kommertspangad vastutavad oma kohustiste eest kogu neile kuuluva varaga. Nad ei vastuta asutajate ja osanike kohustiste eesat ning asutajad ja osanikud ei vastuta pankade kohustiste eest, kui nende põhikirjades ei ole ette nähtud teisiti.

Paragrahv 17. Kommertspankade osanikud

Kommertspankade osanikeks on juriidilised ja üksikisikud, kes osalevad nendes oma vahenditega.

Paragrahv 18. Kommertspankade ja muude krediidasutuste asutamise kord

Kommertspankad ja muud krediidasutused asutatakse ja registreeritakse vabariigi ettevõtteseaduses ja teistes ettevõtlust reguleerivates Eesti Vabariigi normatiivaktides ettenähtud korras.

Kommertspank või muu krediidasutus võidakse registreerida ja ta võib tegutseda vaid riikliku tegevuslitsentsi olemasolul. Tegevuslitsentse annab pankadele ja muudele krediidasutustele Eesti Pank tema poolt kehtestatud korras.

Paragrahv 19. Kommertspankade välismaised asutajad ja osanikud

Välismaiste asutajate ja osanike osalemine kommertspankade asutamises ja tegevuses toimub vastavalt Eesti Vabariigi seadustele.

Paragrahv 20. Tegevuslitsentsi andmisest keeldumise alused

(1) Eesti Pank võib keelduda kommertspankadele või muule krediidasutusele tegevuslitsentsi andmisest järgmistel põhjustel:

- 1) asutamisdokumendid ei vasta Eesti Vabariigi seadustele,
- 2) asutajate finantsseidund on audiitororganisatsiooni hinnangu järgi ebakindel.

(2) Litsentsi taotleja võib vaidlustada Eesti Panga otsuse tegevuslitsentsi andmisest keeldumise kohta. Vaidlus kuulub läbivaatamisele kohtu korras.

Paragrahv 21. Tegevuslitsentsi tühistamise alused

(1) Eesti Pank võib väljaantud tegevuslitsentsi tühistada järgmistel juhtudel:

- 1) kui avastatakse, et tegevuslitsentsi taotlemisel on esitatud tegelikkusele mittevastavaid andmeid,
- 2) kui tegevuse alustamisega on viivitatud kauem kui aasta tegevuslitsentsi andmis-kuupäevast arvates,
- 3) kui rikutakse sätteid panga või muu krediidasutuse varalise tagatuse ja kreditoride huvide kaitse tagamise osas, mis on ette nähtud käesoleva seaduse §28,
- 4) kui sooritatakse operatsioone, mis väljuvad panga või muu krediidasutuse põhikirjas ettenähtud või Eesti Vabariigi seadustega kehtestatud õigusvõime piiridest,
- 5) kui teadlikult esitatakse ebaõigeid või eksitusse viivaid andmeid või aruandeid,

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6) kui kommertsponga või muu krediidasutuse juht või pearaamatupidaja ei vasta oma kutseoskustelt ametikohale.

(2) Tegevuslitsentsi tühistamise otsuse võib vaidlustada kohtu korras.

Paragrahv 22. Kommertsponga tegevuse reorganiseerimine ja lõpetamine

Lisaks käesoleva seaduse teistes paragrahvides märgitud juhtudele reorganiseeritakse (liitmine, ühendamine, jagunemine, eraldumine, ümberkujundamine) kommertsponk või lõpetatakse tema tegevus (likvideerimine põhikirjas ettenähtud korras).

III peatükk. KREDIIDIALANE JA RAHALINE REGULEERIMINE

Paragrahv 23. Krediteerimise ja raharingluse reguleerimine

Eesti Pank reguleerib ringluses oleva raha hulka:

- 1) kommertsponkadele antava krediidi suuruse muutmise teel,
- 2) väärtpaberite ja välisvaluuta ostu ja müügi teel,
- 3) kommertsponkade poolt Eesti Panka mahutatavate kohustuslike reservide normide muutmise teel,
- 4) sularaha emissiooni teel,
- 5) oma krediidi protsendimäärade muutmise teel,
- 6) muude seadusandlusega lubatud abinõudega.

Paragrahv 24. Pankadevahelised arveldused

(1) rahadevahelisteks arveldusteks avatakse Eesti Pangas kommertsponkadele arveldus- (korrespondent-) ja muid kontosid.

(2) Kommertspongad võivad teha arveldusi ka üksikjuures avatud korrespondentkontode ja arvelduspalatite kaudu.

Paragrahv 25. Kommertsponkade krediidi- ja maksetehingud

Kommertspongad annavad teistele pankadele krediiti ja teevad makseid teiste pankade kasuks neil Eesti Pangas ja teistes pankades avatud arveldus- (korrespondent-) kontodel olevate vahendite jäägi piires. Kontol olevate rahaliste vahendite vähesuse korral kaasab kommertsponk krediidi- või makseoperatsiooni sooritamiseks krediidiressursse klientuurile, teistelt kommertsponkadelt lepingu alusel või Eesti Pangalt käesoleva seaduse paragrahvis 49 ettenähtud korras.

Paragrahv 26. Kommertsponkade krediidilt võetavad protsendimäärad

Kommertsponkade operatsioonidelt võetavad protsendimäärad kehtestavad pangad iseseisvalt.

Paragrahv 27. Protsendimäärade tase~~me~~ reguleerimine

Eesti Pank reguleerib kommertspankade krediidioperatsioonidelt võetavate protsendimäärade taset kõiki käesoleva seaduse paragrahvis 23 loetletud abinõusid kasutades.

IV peatükk. PANGA VARALINE TAGATUS JA TEMA KREEDITORIDE HUVIDE KAITSE

Paragrahv 28. Kommertspankadele ja muudele krediidasutustele kehtestatavad majandusnormatiivid

(1) Krediidasutuste varalise tagatuse ja nende kreditoride huvide tagamiseks järgivad kommertspangad ja muud krediidasutused järgmisi Eesti Panga poolt kehtestata~~va~~id majandusnormatiive:

- 1) põhikirjafondi alammäär,
- 2) panga omavahendite ja tema aktive summa piirvahekord,
- 3) likviidsete aktive minimaalsuhe panga võlgadesse,
- 4) Eesti Pangas pangasüsteemi krediidiressursside reguleerimise fondi mahutatavate kohustuslike reservide suurus,
- 5) riski maksimaalsuurus ühe laenusaaja kohta,
- 6) kasumist pangasüsteemi fondi kodanike hoiuste kindlustamiseks ning panga oma reservfondidesse tehtavate eraldiste normatiivid,
- 7) kommertspanga omanduses olevate mittepanganduslike ettevõtete aktsiate ja kommertspanga põhikirjafondi piirvahekord.

(2) Eesti Panga poolt kehtestatavad majandusnormatiivid on ühetüübilistele pankadele või muudele krediidasutustele ühtsed.

Paragrahv 29. Panga omavahendid

Panga omavahendid on:

- 1) põhikirjafond,
- 2) reservid vastavalt käesoleva seaduse paragrahvile 37 ja muud kasumist moodustatavad ning panga bilansis olevad fondid,
- 3) jaotamata kasum, aktsionäridele või osanikele aktsiate tasuta jagamise või osamaksu suurendamise arvel saadud vahendid,
- 4) panga poolt väljaantud tagatiseta võlakohustused summas, mis ei ületa poolt põhikirjafondi.

(2) Panga omavahendite ja tema aktive summa piirvahekorda arvestades vähendatakse põhikirjafondi panga poolt omandatud oma aktsiate või osamaksude väärtuste võrra.

Paragrahv 30. Panga aktivad

§1) Panga aktivad on:

- 1) juriidilistele ja üksikisikutele antud laen,
- 2) investeeringud väärtpaberitesse,
- 3) investeeringud kinnisvarasse,
- 4) muud aktivad.

(2) Panga omavahendite ja tema aktive summa piirvahekorra suuruse arvutamisel ~~võetakse~~ võetakse arvesse aktive eri kategooriaid ning aktivega võrdustatud bilansiväliseid tinglikke võlakohustusi Eesti Panga poolt kehtestatud koefitsientide alusel.

Paragrahv 31. Panga bilansivälised tinglikud kohustused

Panga omavahendite ja tema aktive summa arvutamisel võetakse arvesse ka panga bilansiväliseid tinglikke (eventuaalseid) kohustusi. Panga tinglikke kohustusi arvestatakse aktivatena Eesti Panga poolt kindlaksmääratavas korras.

Paragrahv 32. Likviidsete aktive minimaalsuhe panga võlgadesse

(1) Likviidsed aktivad on:

- 1) panga kassa,
- 2) Eesti Pangalt saadaolevad vahendid,
- 3) Eesti Vabariigi krediidiriski poolest vähemalt samaväärsete riikide, kohalike võimuorganite, samuti riiklikule kontrollile alluvate Eesti Vabariigi ja teiste riikide krediidasutuste poolt väljalastud või tagatud likviidsed võlakirjad
- 5) Eesti Vabariigi ja teiste riikide kommertsbankade vähem kui kolme kuu jooksul tagasimakstavad notovõlad.

(2) Panga maksevõimelisuse tagamiseks peavad panga likviidsed aktivad moodustama vähemalt 10% tema võlgadest, kusjuures nimetatud summast arvatakse maha riigilt sihtotstarbeliseks kasutamiseks saadud vahendid ja võlad Eesti Pangale.

(3) Käesoleva paragrahvi esimeses lõikes toodud laekumiste hulka ei arvata laekumisi kommertsbankadelt ja muudelt krediidasutustelt, kelle kapitalist pank omab üle poole.

Paragrahv 33. Kohustuslike reservide suurus

(1) Kohustuslike reservide suurus kehtestatakse ühtsena kõigile kommertsbankadele ja muudele krediidasutustele protsentides nende poolt kaasatud vahendite üldsummast või selle juurdekasvust.

(2) Pangad ja muud krediidasutused hoiavad oma kohustuslikud reservid Eesti Pangas.

Paragrahv 34. Riski maksimaalmäär ühe laenusaaja kohta

(1) Riski maksimaalmäär ühe laenusaaja kohta kehtestatakse laenusaajate tegevuse iseloomu ja nende maksevõimet arvestades teatud protsendina panga omavahendite üldsummast.

(2) Ühe laenusaaja kohta tuleva maksimaalse riski arvutamisel arvatakse riski mõistesse sellele laenusaajale tehtud mahutuste ja antud krediidi kogusumma, samuti tema käsundi põnjal antud garantiid, tagatiskirjad ja muud kohustised.

Paragrahv 35. Kasumieraldised pangasüsteemi fondi kodanike hoiuste kindlustamiseks

Kodanike hoiuste kindlustamiseks panga maksevõimetuse puhuks eraldavad kommertspangad enne arveldusi eelarvega kehtestatud normide järgi osa kasumist pangasüsteemi fondi nende hoiuste kindlustamiseks. Fondi moodustamise ja kasutamise korra kehtestab Eesti Pank.

Paragrahv 36. Eesti Panga volitused kehtestatud normatiivide rikkumisel kommertspankade poolt

(1) Kui ilmneb, et mõni kommertspank on rikkunud käesoleva seaduse paragrahvis 28 kehtestatud normatiive, näeb Eesti Pank ette rikkumiste kõrvaldamise tähtajad.

(2) Normatiivide pideva rikkumise ja pangaoperatsioonide normatiividega vastavusse viimise tähtaegu ja tingimusi käsitlevate Eesti Panga ettekirjutuste täitmata jätmise korral, mis ohustab panga kreditoride huve, võib Eesti Pank tõstatada nende organite ees, kelle asutamisaktiga riiklik pank moodustati, või kommertspanga osanike ees küsimuse:

- 1) panga tervendamise abinõude rakendamisest,
- 2) panga reorganiseerimisest,
- 3) panga likvideerimisest.

(3) Kommertspankade suhtes, kes rikuvad paragrahvis 28 kehtestatud normatiive, võib Eesti Pank rakendada majandussanktsioone.

(4) Eesti Pank võib samuti tühistada kommertspanga tegevuslitsentsi käesolevas paragrahvis ettenähtud asjaolude ilmnemisel.

Paragrahv 37. Reservid võimalike kahjude katteks.

Pangad moodustavad kasumist reservid võimalike kahjude katteks. Reservid, mis ei ole seotud nende moodustamise päeval olnud lootusetu või kahtlase võlgnevusega, kuuluvad panga omavahendite hulka ning need moodustatakse kasumist enne arvelduste tegemist eelarvega.

Paragrahv 38. Panga saladus

(1) Pangad garanteerivad oma klientidele ja korrespondentidele operatsioonide, kontode ja hoiuste saladuse. Kõik pangateenistujad on kohustatud hoidma saladuses informatsiooni majanduslikust seisukorrast ja ärisaladustest, mida nad on saanud oma töö käigus klientide ja muude isikute kohta.

(2) Õiendeid juriidiliste ja üksikisikute operatsioonide ja kontode kohta antakse:

- 1) juriidilistele ja üksikisikutele endile,
- 2) seaduses ettenähtud juhtudel kohtutele ja arbitraažiorganitele,
- 3) rahandusorganitele maksustamise küsimustes.

(3) Õiendeid kodanike kontode ja hoiuste kohta antakse peale klientide endi ja nende esindajate kohtutele ja uurimisorganitele nende menetluses olevates asjades seadusandluses kehtestatud korras.

(4) Õiendeid kontode ja hoiuste kohta antakse nende valdajate surma korral isikutele, kelle konto või hoiuse valdaja on märkinud pangale tehtud testamendis korralduses, samuti riiklikele notariaalkontoritele ja välisriikide konsulaaresindustele.

Paragrahv 39. Pangas olevate rahaliste vahendite ja muude väärtuste arestimine ja neile sissenõude pööramine

(1) Pankades olevaid juriidiliste ja üksikisikute rahalisi vahendeid ja muid väärtusi võib arestida ainult kohtuotsuse ja uurimis- või arbitraažiorganite määruste põhjal. Sissenõude neile vahenditele võib aga pöörata ainult kohtute poolt antud täitehted, arbitraažiorganite käskkirjade ja muude täitedokumentide põhjal, Eesti Vabariigi seadusandluses ettenähtud juhtudel aga rahandusorganite ja muude organisatsioonide nõudmisel.

(2) Pangas olevaid Nõukogude ja välisriikide ning rahvusvaheliste organisatsioonide rahalisi vahendeid ja muid väärtusi võib arestida või pöörata neile sissenõude ainult kohtute või arbitraažiorganite otsuste alusel seadusandluses kehtestatud korras.

(3) Pangas olevaid üksikisikute rahalisi vahendeid ja muid väärtusi võib arestida ainult:

- 1) kohtute ja uurimisorganite määruste alusel nende menetluses olevates kriminaalasjades ning vara konfiskeerimise asjade läbivaatamisel,
- 2) kohtute määruste alusel, kelle menetluses on kriminaalasjadest tulenevad tsiviillasjad (välja arvatud osa, mis võrdub arestimisele eelnenud kalendriaastal saadud kolmekordse keskmise kuupalgaga (pensioniga) ning alimentide sissenõudmise (palga või muu sellise vara puudumisel, millele saab pöörata sissenõude või abikaasade ühisvaraks oleva hoiuse jagamise asjad).

(4) Üksikisikute rahalistele vahenditele ja muudele väärtustele pankades võib pöörata sissenõude kohtu poolt kriminaalasjas tehtud otsuse või kriminaal-

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nõudmise (palga või muu sellise vara puudumisel, millele saab pöörata sissenõude) kohta tehtud kohtuotsuse või rahvakohtuniku määruse või abikaasade ühisvaraks oleva hoiuse jagamise kohta tehtud kohtuotsuse alusel.

(5) Pankades olevaid üksikisikute rahalisi vahendeid või muud vara võib konfiskeerida kriminaalasjas jõustunud kohtuotsuse või kooskõlas seadusega tehtud vara konfiskeerimise määruse alusel.

(6) Juriidiliste ja üksikisikute pankades olevaid rahalisi vahendeid ja muud väärtusi vabastab aresti alt neid arestinud organ.

V peatükk. KLIENTUURI TEENINDAMINE PANKADE POOLT

Paragrahv 40. Panga ja tema kliendi suhete lepinguline iseloom

- (1) Panga ja tema klientide suhetel on lepinguline iseloom.
- (2) Kliendid valivad ise panga krediidi- ja arveldusalaseks teenindamiseks.
- (3) Kommertsbank võib võtta või mitte võtta klienti krediidi- ja arveldusalasele teenindamisele.

Paragrahv 41. Krediidi tagastatavuse tagamine

- (1) Pank võtab krediidi õigeaegse tagastamise tagatisena pante, garantiisid, tagatiskirju ja panganduspraktikas kehtivaid muus vormis kohustusi.
- (2) PANGAD võivad teha otsuseid krediidi andmise kohta tagatiseta (blankokrediit).

Paragrahv 42. Pant

- (1) PANGAD võivad võtta pandiks pandi alt vabasid kaubalis-materiaalseid väärtusi, kliendi poolt valmistatavat toodangut, väärtpäbereid, kaubajaotusdokumente ning muid väärtusi. Välismaal asuvad kaubalis-materiaalsed väärtused, mille pangad on võtnud pandiks välismaajandusoperatsioonide krediidi tagatisena, peavad olema kindlustatud kliendi kulul.
- (2) Hooneid, rajatisi, seadmeid ja muud põhivahendite hulka kuuluvat vara võib võtta pandiks, juhul kui klient vastutab kooskõlas seadusandlusega oma kohustiste eest kogu talle kuuluva varaga.
- (3) Pandi registreerimise korra kehtestab Eesti Vabariigi Valitsus.
- (4) Pikaajalise, enam kui 60 päeva tasumisega hilinevad laenuvõlgnevuse korral, mille tagatiseks on panditud kaubalis-rahalsed väärtused, on pangal õigus pärast pretensioonide rahuldumist palga ja eelarvaesse kantavate maksete osas suunata võlgnevuse kustutamiseks ettevõtte poolt panditud vara müügist saadud tulum.
- (5) PANGAS panditud vara ei makse tema juhise põhjal kohtusse, arbitraaži või vahekohtusse pöördumata.

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(6) Pangas panditud vara müügist saadud vara vahendid lähevad pangale pandiga tagatud võlgnevuse kustutamiseks, kusjuures pangal on eelisõigus teiste juriidiliste ja üksikisikute pretensioonide ees.

Paragrahv 43. Arvelduste vormid

Pangad teevad arveldusi Eesti Panga poolt lubatud vormides.

Paragrahv 44. Laenusaaajate maksevõimetuks tunnistamine

Pangad võivad laenusaaajaid, kes ei ole täitnud oma kohustusi pankadelt saadud vahendite õigeaegsa tagastamise osas, tunnistada maksevõimetuks, teatades sellest kreditoridele, kohaliku omavalitsuse täitevorganite ning sellise ühisettevõtte osanikele, kus osalevad Eesti, Nõukogude ja välisriikide organisatsioonid ning avaldades ajakirjanduses sellekohase teate 7 päeva jooksul.

Paragrahv 45. Maksevõimetuks tunnistatud laenusaaaja suhtes rakendatavad abinõud

Maksevõimetuks kuulutatud laenusaaaja suhtes võib pankade ettepanekul rakendada järgmisi abinõusid:

- 1) operatiivjuhtimise üleandmine administratsioonile, kes määratakse kreditoriks oleva panga osavõtul,
- 2) reorganiseerimine,
- 3) likvideerimine koos pangale panditud vara realiseerimisega vastavalt seadusandlusele.

Paragrahv 46. Pankade tasulised teenused

Pank osutab klientidele ja üksteisele lepingu alusel tasulisi teenuseid käesoleva seaduse paragrahvis 2 ettenähtud operatsioonide osas.

VI peatükk. PANKADE VÄLISMAJANDUSTEgevus

Paragrahv 47. Kontroll pankade välisvõlgnevuse üle

Eesti Pank teostab Eesti Vabariigi seadusandlusega ettenähtud korras kontrolli pankade võlgnevuse üle välismaistele kreditoridele.

Paragrahv 48. Panga valuutafondid

Pank kasutab välisvaluutat ning moodustab valuutafonde kooskõlas kehtiva seadusandlusega.

VII peatükk. PANKADEVAHELISED SUNTED

Paragrahv 49. Pankadevahelised deposiidi- ja krediidioperatsioonid

(1) Kommertspangad võivad lepingu alusel kaasata ja mahutada üksteise juures vahendeid deposiidi ja krediidi näol ning sooritada muid nende põhikirjades ettenähtud vastastikuseid operatsioone.

(2) Klientide krediteerimiseks ja endale võetud kohustiste täitmiseks vajalike vahendite vähesuse korral võivad kommertspangad pöörduda krediidi saamiseks Eesti Panga poole. Selliste krediidioperatsioonide sooritamise korra määrab kindlaks Eesti Pank.

VIII peatükk. ELANIKE HOIUSED

Paragrahv 50. Elanike hoiused kui kommertspanga kredidiressursid

(1) Kommertspank võib kaasata elanike rahalisi vahendeid nende kasutamiseks kredidiressurssidena.

(2) Pank võtab vastu hoiuseid, andes hoiustajale hoiustusdokumendi.

Paragrahv 51. Hoiustajad

(1) Hoiustajaiks võivad olla üksikisikud, olenemata nende kodakondsusest.

(2) Hoiustaja võib käsutada hoiuseid, saada hoiustelt tulu protsentidena ja muus panga poolt pakutavas vormis ning sooritada sularahata arveldusi.

(3) Kommertspankadesse sisse makstud hoiuste käsutamise kord määratakse kindlaks kommertspankade põhikirjades ning panga ja kliendi vahelise hoiustamis- lepinguga.

Paragrahv 52. Alaealiste õigused hoiuste osas

(1) Hoiustajaks võib olla ka alaealine isik.

(2) Alaealine, kes on ise sisse maksnud hoiuse oma nimele, kasutab seda hoiust iseseisvalt.

(3) Teise isiku poolt alaealise nimele sisse makstud hoiuseid käsutavad:

1) alaealise 15-aastaseks saamiseni alaealise vanemad või muud seaduslikud esindajad,

2) pärast alaealise 15-aastaseks saamist alaealine ise, kuid oma vanemate või muude seaduslike esindajate nõusolekul.

Paragrahv 54. Hoiustaja testamentaarne korraldus

(1) Hoiustajal on õigus teha testamentaarne korraldus hoiuse väljamaksmise kohta tema surma korral mistahes isikule, organisatsioonile või riigile.

(2) Käesoleva paragrahvi lõikes 1 ettenähtud juhtudel ei kuulu hoius pärandvara hulka. Pangad maksavad selliseid hoiuseid välja Eesti Vabariigi seadusandluses ettenähtud korras.

(3) Hoiuse, mille kohta ei ole tehtud testamentaarset korraldust, maksavad pangad hoiustaja surma korral pärijatele välja Eesti Vabariigi seadusandluses ettenähtud korras.

IX peatükk. PANKADE ARUANDLUS

Paragrahv 55. Aruannete esitamine ning aastabilansside ning kasumi- ja kahjumiaruannete avaldamine

- (1) Pangad esitavad aruandeid kehtiva seadusandluse alusel kehtestatud korras.
- (2) Pangad avaldavad aastabilansi ning aruande kasumi ning kahjumi kohta Eesti Panga poolt kehtestatud vormis ja tähtajal.

X peatükk. JÄRELEVALVE KOMMERTSPANKADE TEGEVUSE ÜLE

Paragrahv 56. Eesti Panga järelevalve funktsioonid

(1) Eesti Pank teostab järelevalvet kooskõlas käesoleva seadusega kehtestatud kohustuslike normatiivide järgimise üle kommertspankade poolt ning Eesti Vabariigi seadusandluse ja Eesti Panga poolt väljaantavate normatiivaktide õige rakendamise üle.

(2) Käesoleva paragrahvi lõikes 1 ettenähtud funktsiooni täitmiseks võib Eesti Pank korraldada kommertspankade poolt sooritatavate operatsioonide üld- või valikkontrolli, mis üldjuhul ei toimu sagedamini kui kord aastas. Eesti Panga Nõukogu otsuse alusel võib kontrollimine toimuda ka sagedamini.

(3) Kommertspankade tegevust kontrollib Eesti Panga revisjonitalitus või Eesti Panga ülesandel mõni muu revisjoni- või auditororganisatsioon.

(4) Kommertspankad on kohustatud esitama kontrolli teostava organisatsiooni nõudmisel selle bilansse, plaane, aruandeid ja muid kontrolliks vajalikke dokumente.

Eesti Vabariigi Ülemnõukogu Presiidiumi
esimees

Eesti Vabariigi Ülemnõukogu Presiidiumi
sekretär

A.Rüütel

A.Almann

Tallinn, 28.detsembril 1989.a.

Nr.2293-XI

muudatus

Tallinn, 15.mail 1991.a.

Arakiri õige



**AMENDMENTS TO THE BANK LAW
OF THE REPUBLIC OF ESTONIA, 7/8/92**

ENGLISH AND ESTONIAN

REPUBLIC OF ESTONIA.

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on Amendments and Additions to the Bank Law of the
Republic of Estonia

To the Bank Law of the Republic of Estonia (EISV Teataja 1989, No.41, art. 647; RT 1990, No.2, art. 36; RT 1991, No.16, art. 222) the following amendments and additions shall be made:

1. Add to the first and second paragraphs of the preamble, after the word 'banks', the words 'and other credit institutions'

2. Make amendments to Article 1, so that it shall read as follows:

"Article 1. Definition of Bank and Other Credit Institutions

(1) Banks are institutions that carry out bank operations sanctioned by the present Law.

(2) Other credit institutions are savings unions, credit unions and specialized credit institutions. Other credit institutions are subject to all the regulations established for banks in the present Law, with the exception of special conditions mentioned in Article 12.3 and 12.4."

3. Make amendments to Article 2.1.1, so that it shall read as follows:

"1) holding monetary deposits and extending credit;"

4. Make amendments to Article 2.1.11, so that it shall read as follows:

"11) buying and selling foreign currency;"

5. In the title of Article 5, replace the word 'Integral' by the word 'Estonian'

6. Make amendments to Article 5.2, so that it shall read as follows:

"(2) In order to register at the local-municipal body, branches and agencies of commercial banks and other credit institutions shall have to be previously registered at the Bank of Estonia."

7. In Article 5.4, replace the words 'any and all banks' by the words 'banks and other credit institutions'.

8. Make amendments to Article 6.1, so that it shall read as follows:

"(1) Banks and other credit institutions are guided in their activities by the laws of the Republic of Estonia, by decisions made by the supreme state authorities of the Republic of Estonia, by their own Statutes and by the official standards established by the Bank of Estonia."

9. Make amendments to Article 7.1, so that it shall read as follows:

"(1) The Bank of Estonia is an independent institution that gives an account of its activities to the supreme state authority of the Republic of Estonia at least once a year."

10. In Article 7.2, add to the first sentence the following sentence:

"Neither Government members nor their deputies can be appointed as members of the Board of the Bank of Estonia."

11. In Article 7.2, replace the words 'Supreme Council' by the words 'supreme state authority'.

12. Make amendments to Article 7.5, so that it shall read as follows:

"(5) The Bank of Estonia makes public its annual balance statement and report on activities in the Riigi Teataja."

13. Make amendments to Article 8.1 and 8.2, so that they shall read as follows:

"(1) The main functions of the Bank of Estonia are:

1) to regulate currency circulation, crediting, clearing of payments and foreign exchange;

2) to determine the exchange rate of the Estonian kroon and to ensure the kroon's stability;

3) to issue the Estonian kroon into circulation and to remove it from circulation;

4) to manage the monetary and credit system of the Republic of Estonia;

5) to supervise and inspect the activities of banks and other credit institutions in the Republic of Estonia.

(2) With its activities the Bank of Estonia takes part in the elaboration of the economic strategies of the Republic of Estonia."

14. Make amendments to Article 10, so that it shall read as follows:

"Article 10. Tasks of the Bank of Estonia in executing the functions of the State Treasury

(1) The Bank of Estonia is the keeper of the budget surplus of the Republic of Estonia.

(2) The Bank of Estonia is not allowed to credit the state and local budgets of the Republic of Estonia."

15. Make amendments to Article 11.1.5, so that it shall read as follows:

"5) to give guarantees to financial and credit institutions of foreign countries and to international organizations, as far as monetary obligations are concerned;"

16. In Article 11.2, replace the word 'usage' by the word 'registration'.

17. Make amendments to Article 12.1, so that it shall read as follows:

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"(1) A commercial bank is a credit institution which, on the basis of contracts, involves and invests money, serves its customers at the cashdesk and carries out clearings of payments. According to its Statutes, a commercial bank has also the right to carry out other banking operations."

18. In Article 15, add to the word 'contributions' the words 'and profit'.

19. Make amendments to the first sentence of Article 12, so that it shall read as follows:

"Commercial banks and other credit institutions are founded and registered according to the Law of Enterprise of the Republic of Estonia."

20. Add to Article 21.1 another point, No.7, which shall read as follows:

"7) if balance statements and other obligatory reports are not submitted when they are due."

21. Make amendments to Article 22, so that it shall read as follows:

"Article 22. Reorganizing or Terminating the Activities of Commercial Banks or Other Credit Institutions

(1) In addition to the cases mentioned in other articles of the present Law, a commercial bank or another credit institution is reorganized (joining, merger, dividing, separation, restructuring) or its activities are terminated (liquidation) in accordance with the Statutes of the bank or the credit institution.

(2) In case the operating license is cancelled on the grounds pointed out in Article 21 of the present Law, the commercial bank or the credit institution shall be subject to forceful liquidation, on the terms and the date determined by the President of the Bank of Estonia."

22. Make amendments to Article 23.1, so that it shall read as follows:

"1) changing the terms of crediting commercial banks and other credit institutions;"

23. -

24. -

25. Make amendments to Article 24.1 and 24.2, so that they shall read as follows:

"(1) The banks located in the Republic of Estonia shall open correspondent accounts at the Bank of Estonia.

(2) Banks may make payments between themselves through clearing houses or by correspondent accounts opened at each other's banks."

26. Make amendments to Article 26, so that it shall read as follows:

"Article 26. Rates of Operation Fees / Payment on Transactions
Commercial banks and other credit institutions establish the rates of operation fees independently."

27. Make amendments to Article 36.3, so that it shall read as follows:

"(3) With regard to commercial banks that violate the norms established in Article 28 of the present Law and the terms of clearing established in Article 43 of this Law, the Bank of Estonia can enact and apply economic sanctions. The decision taken by the Bank of Estonia to apply economic sanctions shall be final."

28. In Article 38.2 leave out the words 'courts and arbitration authorities' in point 2); delete 38.2.3.

29. In Article 39.1, replace the words 'written orders' by the word 'orders'.

30. In Article 39.2, delete the word 'Soviet'

31. -

32. Make amendments to Article 42, so that it shall read as follows:

"(1) Banks and other credit institutions have the right to accept for collateral commercial-financial assets, securities and other assets.

(2) Banks and other credit institutions have the right to demand that the collateral be insured at the customer's own expense

(3) All collateral contracts concluded by banks and other credit institutions shall be in writing. A collateral contract shall include the names and addresses of the parties, the name of the collateral asset and the nature of the claim, the size of the claim and the deadlines. The parties may agree on other conditions, in case these are not in contradiction with the legislation.

(4) In case the customer violates the terms set forth in the collateral contract, the bank or the other credit institution has the right to place a lien against the property set up as collateral ahead of the set deadline.

(5) In case a collateral is offered to a bank or another credit institution, the customer must qualify as owner of the property set up as collateral, or have a warrant from the owner.

(6) Banks are obliged to register or to mark any property set up as collateral, in a way that will ensure the possibility to have control over it.

(7) In case of a loan debt which is more than 60 days overdue and the collateral of which are commercial-financial assets, the banks and other credit institutions, after satisfying pretensions on salary and budgetary requirements for taxes, reserve the right to use the receipts from the sale of the property put up as collateral for eliminating the indebtedness and for covering any other expenses resulting from the indebtedness. The means remaining from eliminating the indebtedness and covering the expenses shall be returned to the customer.

(8) The property put up in a bank or another credit institution is sold at open auctions or through commercial enterprises."

33. In Article 43, add the words 'and on the terms' to the word 'way'.

34. Make amendments to Article 48, so that it shall read as follows:

"Banks and other credit institutions use foreign currency in accordance with the established legislation."

35. From the title of Article 50, delete the words 'for Commercial Banks'.

36. Make amendments to Article 50.1, so that it shall read as follows:

"(1) Commercial banks and other credit institutions may engage the financial resources of citizens for use as credit resources."

37. Make amendments to the title of Chapter X, so that it shall read as follows:

"Chapter X. Inspection of the Activities of Banks."

38. Add Article 57 to the Law. The new Article shall read as follows:

"Article 57. Applying a Moratorium

(1) On the basis of an application submitted by the President of the Bank of Estonia, the Board of the Bank of Estonia has the right to impose a moratorium on banks for a period of up to one year. A moratorium is applied to a bank which fails to fulfil its obligations to the creditors.

(2) During the moratorium the bank will not fulfil the obligations taken before the moratorium was set, but it will ~~realize~~^{sell} its assets in order to obtain the necessary means for a simultaneous settling of its obligations.

(3) While the moratorium is in force, the creditors have no right to submit to court the claims that the bank has accepted.

(4) The claims by the creditors which are not submitted by the fixed deadline shall be verified and satisfied according to the accounting documents of the bank.

(5) For the time of the moratorium, the President of the Bank of Estonia, considering the interests of the creditors, has the right to remove immediately from office either all or some members of the Board and the Management of the Bank and appoint other persons to replace them. The decision of the President of the Bank of Estonia is final.

(6) By the date set for the end of the moratorium the Board of the Bank of Estonia, pursuant to the relevant proposal by the President of the Bank of Estonia, shall pass a decision on whether to allow the bank to continue in its activities or to initiate bankruptcy proceedings.

(7) The procedure for applying a moratorium shall be established by the Bank of Estonia.

39. Consider as invalid Article 7.4, Article 12.2, Articles 27 and 44.

A. Rüütel
Chairman
Supreme Council
Republic of Estonia

Tallinn, 8 July, 1992

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EESTI VABARIIGI

SEADUS

Muudatuste ja täienduste tegemise kohta
Eesti Vabariigi pangaseaduses

Teha Eesti Vabariigi pangaseaduses (ENSV Teataja 1989, nr. 41, art. 647; RT 1990, nr. 2, art. 36; RT 1991, nr. 16, art. 222) järgmised muudatused ja täiendused:

1. Täiendada preambula esimest ja teist lõiku pärast sõna "pankade" sõnadega "ja muude krediitiasutuste".
2. Muuta § 1 ja sõnastada see järgmiselt:
"§ 1. Panga ja muu krediitiasutuse mõiste
(1) Pank on asutus, kes sooritab käesolevas seaduses ettenähtud pangaoperatsioone.
(2) Muud krediitiasutused on hoiuühistud, krediidiühistud ja spetsialiseeritud krediitiasutused. Muudele krediitiasutustele laienevad kõik käesoleva seadusega pankadele kehtestatud sätted, välja arvatud § 12 3. ja 4. lõikes märgitud eritingimused."
3. Muuta § 2 1. lõike 1. alapunkt ja sõnastada see järgmiselt:
"1) rahaliste hoiuste kaasamine ja laenude andmine;"
4. Muuta § 2 1. lõike 11. alapunkt ja sõnastada see järgmiselt:
"11) välisvaluuta ost ja müük;"
5. Asendada § 5 pealkirjas sõna "ühtse" sõnaga "Eesti".
6. Muuta § 5 2. lõige ja sõnastada see järgmiselt:
"(2) Kommertspankade ja muude krediitiasutuste filiaalid ja esindused peavad nende registreerimiseks kohaliku omavalitsuse organi juures olema eelnevalt registreeritud Eesti Pangas."
7. Asendada § 5 4. lõikes sõnad "mis tahes pankade" sõnadega "pankade ja muude krediitiasutuste".
8. Muuta § 6 1. lõige ja sõnastada see järgmiselt:
"(1) Pangad ja muud krediitiasutused juhivad oma tegevuses Eesti Vabariigi seadustest, Eesti Vabariigi kõrgeima riigivõimuorgani otsustest, oma põhikirjast ja Eesti Panga poolt väljaantud normatiivaktidest."

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9. Muuta § 7 1.lõige ja sõnastada see järgmiselt:

"(1) Eesti Pank on iseseisev asutus, kes esitab vähemalt kord aastas oma tegevusaruande Eesti Vabariigi kõrgeimale riigivõimuorganile."

10. Täiendada § 7 2.lõiget pärast esimest lauset lausega:

"Eesti Panga nõukogu koosseisu ei saa nimetada Eesti Vabariigi Valitsuse liikmeid ega nende asetäitjaid."

11. Asendada § 7 2.lõikes sõna "Ülemnõukogu" sõnadega "kõrgeima riigivõimuorgani".

12. Muuta § 7 5.lõige ja sõnastada see järgmiselt:

"(5) Eesti Pank avaldab oma aastabilansi ja tegevusaruande Riigi Teatajas."

13. Muuta § 8 1. ja 2. lõige ja sõnastada need järgmiselt:

"(1) Eesti Panga põhiülesanded on:

- 1) raharingluse, krediteerimise, arvelduste ja valuutasuhete reguleerimine;
- 2) Eesti krooni emiteerimine ja käibelt kõrvaldamine;
- 3) Eesti krooni kursi määramine ja stabiilsuse tagamine;
- 4) vabariigi raha- ja krediitidiasüsteemi juhtimine;
- 5) pankade ja muude krediitidiasutuste tegevuse reguleerimine ning järelevalve Eesti Vabariigis.

(2) Eesti Pank osaleb oma tegevusega Eesti Vabariigi majanduspoliitika kujundamises."

14. Muuta § 10 ja sõnastada see järgmiselt:

"§ 10. Eesti Panga ülesanded riigikassa funktsioonide täitjana

(1) Eesti Pank on Eesti Vabariigi riigieelarve jääkide hoidja.

(2) Eesti Pangal on keelatud krediteerida Eesti Vabariigi riigieelarvet ja kohalikke eelarveid."

15. Muuta § 11 1.lõike 5.alapunkt ja sõnastada see järgmiselt:

"5) anda rahaliste kohustiste garantiisid välisriikide rahandus- ja krediitidiasutustele ning rahvusvahelistele organisatsioonidele;"

16. Asendada § 11 2.lõikes sõna "kasutamise" sõnaga "registreerimise".

17. Muuta § 12 1.lõige ja sõnastada see järgmiselt:

"(1) Kommertspank on krediitidiasutus, mis lepingulisel alusel kaasab ja paigutab raha, teostab klientide kassalist teenindamist ning sooritab arveldusi. Kommertspangal on õigus sooritada ka muid pangaoperatsioone vastavalt oma põhikirjale."

18. Täiendada § 15 pärast sõna "maksetest" sõnadega "ning kasumist".

19. Muuta § 18 esimene lause ja sõnastada see järgmiselt:
"Kommertspangad ja muud krediidiasutused asutatakse ja registreeritakse Eesti Vabariigi ettevõtteseaduses ettenähtud korras."

20. Täiendada § 21 1.lõiget uue, 7.alapunktiga järgmises sõnastuses:

"7) kui õigeaegselt ei esitata bilansse ja muid kohustuslikke aruandeid."

21. Muuta § 22 ja sõnastada see järgmiselt:

"§ 22. Kommertspanga ja muu krediidiasutuse tegevuse reorganiseerimine ja lõpetamine

(1) Lisaks käesolevas seaduses märgitud juhtudele reorganiseeritakse (liitmine, ühendamine, jagunemine, eraldumine, ümberkujundamine) kommertspank või muu krediidiasutus või lõpetatakse selle tegevus (likvideerimine)põhikirjas ettenähtud korras.

(2) Tegevuslitsentsi tühistamisel käesoleva seaduse § 21 toodud alustel toimub kommertspanga või muu krediidiasutuse sundlikvideerimine, mille korra ja tähtaja määrab Eesti Panga president."

22. Muuta § 23 1. alapunkt ja sõnastada see järgmiselt:

"1) kommertspankade ja muude krediidiasutuste krediteerimise tingimuste muutmise teel;"

23. Asendada § 23 4.alapunktis sõna "teel" sõnaga "kaudu."

24. Asendada § 23 5.alapunktis sõna "protsendimäärade" sõnaga "intressimäärade".

25. Muuta § 24 1. ja 2.lõige ning sõnastada need järgmiselt:

"(1) Eesti Vabariigis asuvad pangad avavad Eesti Pangas oma korrespondentkontod.

(2) Pangad võivad teostada omavahelisi arveldusi arvelduskodade või üksteise juures avatud korrespondentkontode kaudu."

26. Muuta § 26 ja sõnastada see järgmiselt:

"§ 26. Operatsioonidelt võetav tasu

Kommertspangad ja muud krediidiasutused kehtestavad oma operatsioonidelt võetava tasu määrad iseseisvalt."

27. Muuta § 36 3.lõige ja sõnastada see järgmiselt:

"(3) Kommertspankade suhtes, kes rikuvad käesoleva seaduse § 28 1.lõikes nimetatud normatiive ning § 43 alusel

kehtestatud arveldustingimusi, võib Eesti Pank kehtestada ja rakendada majandussanktsioone. Eesti Panga otsus majandussanktsiooni rakendamise kohta on lõplik."

28. Jätta välja § 38 2.lõike 2.alapunktist sõnad "kohtutele ja arbitraažorganitele" ning 3.alapunkt.

29. Asendada § 39 1.lõikes sõna "käskkirjade" sõnaga "käskude".

30. Jätta välja § 39 2.lõikest sõnad "Nõukogude ja".

31. Asendada § 39 5.lõikes sõnad "või muud vara" sõnadega "ja muid väärtusi".

32. Muuta § 42 ja sõnastada see järgmiselt:

"(1) Pankadel ja muudel krediidasutustel on õigus võtta pandiks kaubalis-materiaalseid väärtusi, väärtpabereid ning muud vara.

(2) Pankadel ja muudel krediidasutustel on õigus nõuda pandieseme kindlustamist kliendi kulul.

(3) Kõik pankade ja muude krediidasutuste poolt sõlmitud pandilepingud peavad olema kirjalikud. Pandilepingus peavad olema näidatud poolte nimed ja aadressid, pandiese ning pandiga tagatud nõude olemus, selle suurus ja tähtajad. Pooled võivad kokku leppida muudes tingimustes, mis ei ole seadusega vastuolus.

(4) Kui pantija ei pea kinni pandilepingu tingimustest, siis on pangal või muul krediidasutusel õigus pöörata pandiesemele sissenõue ennetähtaegselt.

(5) Pangale ja muule krediidasutusele vara pantimisel peab klient olema panditava vara omanik või tal peavad olema vara omaniku volitused.

(6) Pangad on kohustatud registreerima või märgistama pandi viisil, mis tagab pandi kontrollimise võimalused.

(7) Enam kui 60 päeva tasumisega hilinenud laenuvõlgnevuse korral, mille tagatiseks on panditud kaubalis-materiaalsed väärtused, on pankadel ja muudel krediidasutustel õigus pärast nõuete rahuldamist töötasude ja eelarvesse kantavate maksete osas suunata võlgnevuse ning sellega seotud muude kulutuste tasumiseks kliendi poolt panditud vara müügist saadud tulem. Võlgnevuse ja kulutuste katmisest ülejäänud vahendid tagastatakse kliendile.

(8) Pankadele ja muudele krediidasutustele panditud vara müüakse avalikel enampakkumistel või kaubandusasutuste kaudu."

33. Täiendada § 43 pärast sõna "vormides" sõnadega "ja tingimustel".

34. Muuta § 48 ja sõnastada see järgmiselt:

"Pank ja muu krediidasutus kasutab välisvaluutat seaduses ettenähtud korras."

35. Jätta välja § 50 pealkirjast sõna "kommertspanga".

36. Muuta § 50 1.lõige ja sõnastada see järgmiselt:

"(1) Kommertspangad ja muud krediidiuasutused võivad kaasata elanike raha selle kasutamiseks krediidiressursina."

37. Muuta X peatüki pealkiri ja sõnastad see järgmiselt:

"X peatükk. Järelevalve pankade tegevuse üle"

38. Täiendada seadust 57. paragrahvi järgmises sõnastuses:

"§ 57. Moratooriumi kehtestamine

(1) Eesti Panga nõukogul on õigus Eesti Panga presidendi esildise alusel kehtestada pankadele moratoorium tähtajaga kuni üks aasta. Moratoorium kehtestatakse pangale, milline ei suuda täita oma kohustusi kreditoride ees.

(2) Moratooriumi ajal ei täida pank enne moratooriumi kehtestamist endale võetud kohustusi, vaid realiseerib oma aktiivaid, kogumaks vahendeid nende kohustuste üheaegseks täitmiseks.

(3) Moratooriumi ajal ei ole kreditoridel õigust pöörduda kohtusse nõuetega, milliseid pangad on tunnistanud.

(4) Kreditoride nõuded, mis ei ole esitatud määratud tähtajaks, tehakse kindlaks ja rahuldatakse panga raamatupidamise dokumentide alusel.

(5) Moratooriumi ajaks võib Eesti Panga president kreditoride huvides kõrvaldada viivitamatult juhtimisest kas kõik või üksikud panga nõukogu ja juhatuse liikmed ning määrata nende asemele teised isikud. Eesti Panga presidendi otsus on lõplik.

(6) Moratooriumi tähtaja lõppemisel otsustab Eesti Panga nõukogu Eesti Panga presidendi ettepanekul, kas lubada panga edasine tegutsemine või algatada pankrotimenetlus.

(7) Moratooriumi rakendamise korra kehtestab Eesti Pank.

39. Tunnistada kehtivuse kaotanuks § 7 4.lõige, § 12 2.lõige ning §-d 27 ja 44.



Eesti Vabariigi Ülemnõukogu
esimees

A. Rüütel

Tallinn, 8. juulil 1992

STATUTES OF THE BANK OF ESTONIA, 3/15/90
AMENDMENTS OF 2/27/92. ENGLISH AND ESTONIAN

UNAUTHORIZED TRANSLATION

STATUTE OF EESTI PANK (BANK OF ESTONIA)

Chapter 1 General Principles

1. Eesti Pank is the central bank of the Republic of Estonia, founded on the basis of the Bank Law of the Republic of Estonia.

2. Eesti Pank is an independent state organization, which shall give an account of its activities to the highest body of state authority of the Republic of Estonia.

Eesti Pank shall be guided in its activities by the Bank Law of the Republic of Estonia, by the decisions of the highest body of state authority of the Republic of Estonia and by the present Statute.

3. Eesti Pank is a self-financing legal person, which shall be responsible for all its obligations through the property belonging to it.

Eesti Pank is not responsible for the obligations of the Republic of Estonia. The Republic of Estonia is not responsible for the obligations of Eesti Pank, except when the Republic of Estonia decides to accept such a responsibility.

4. Eesti Pank informs the Government of the Republic of Estonia about the decisions adopted by it on currency circulation and banking.

Chapter 2 Basic Tasks

5. The basic tasks of Eesti Pank are:

5.1. to elaborate and execute the republic's economic strategy within the areas of currency circulation, credit extension, financing, clearing of accounts and foreign exchange operations;

5.2. to control the monetary and credit system of the Republic of Estonia;

5.3. to guarantee a stable currency circulation;

5.4. to guarantee the purchasing power of the national currency and to establish an exchange rate for the latter in relation to foreign currencies.

Chapter 3 Rights and Obligations

6. Eesti Pank shall use its rights and fulfill its obligations in carrying out the functions assigned to it.

7. In regulating currency circulation, Eesti Pank

7.1. shall organize the production, transport and storage of banknotes and coins of the national currency of the Republic of Estonia;

7.2. shall release into and remove from circulation the national currency of the Republic of Estonia;

7.3. shall create reserve funds of the national currency of the Republic of Estonia and shall determine the banks to be entrusted with them;

7.4. shall determine the regulations of how currencies of other countries shall be used by legal persons and single individuals of the Republic of Estonia and on the territory of the Republic of Estonia, based on international treaties and agreements with the central banks of other countries;

7.5. shall keep the gold reserves of the Republic of Estonia as well as state reserves of the Republic of Estonia;

7.6. shall determine the conditions under which national currency shall be converted into other currencies;

7.7. shall buy and sell currencies of other countries.

8. With respect to clearing accounts and extending credits, Eesti Pank

8.1. shall have the right to open current, correspondent and other accounts for banks of the Republic of Estonia and foreign countries as well as the right to open current, correspondent and other accounts with banks of the Republic of Estonia and foreign countries;

8.2. shall grant permission to use account forms in the Republic of Estonia;

8.4. shall establish, based on international agreements and banking practice, a procedure for foreign operations in the Republic of Estonia, as well as shall conduct foreign operations itself and shall have the right to grant commercial banks the right to conduct operations with foreign banks;

8.5. shall write off reciprocal balances of payments between commercial banks if they clear correspondent accounts in each other's banks or through an accounting bureau;

8.6. shall establish, together with the Ministry of Finance of the Republic of Estonia, a procedure for conducting operations concerning the realization of state and local budgets;

8.7. shall influence the availability and extension of credit through the means at its disposal (economic regulations, interest rates and the sale and purchase of stocks, bonds and other securities);

8.8. shall regulate, together with the Ministry of Finance of the Republic of Estonia, the internal and foreign debt of the Republic of Estonia, determining the sources, terms and other conditions of the state loan in cooperation with commercial banks;

8.9. shall compile and make public reports on the state of currency circulation and banking in the Republic of Estonia;

8.10. shall grant commercial banks the right to conduct operations not mentioned in the Bank Law of the Republic of Estonia.

9. With respect to foreign economic activity, Eesti Pank:

9.1. shall represent the interests of the Republic of Estonia in its relations with the central and commercial banks

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of other countries, international banks as well as with other financing and credit organizations, including the International Monetary Fund and the Bank for International Settlements;

9.2. shall conclude credit agreements (grants and receives loans, issues and redeems bills of exchange, issues guarantees, etc.) with foreign and international banks as well as finance and credit organizations, along with offering remunerative services;

9.3. shall conclude correspondent and other agreements with foreign and international banks;

9.4. shall participate in the drawing up of the balance of payments of the Republic of Estonia;

9.5. shall supervise the foreign indebtedness of commercial banks and other enterprises and organizations and shall, if needed, take appropriate measures in accordance with its own jurisdiction.

10. In dealing with commercial banks and other credit institutions, Eesti Pank":

10.1. shall issue founding and operation licences in addition to state licences for activities in currency circulation and banking operations and shall, in accordance with existing legislation, revoke the said licences;

10.2. shall establish the procedure for founding credit institutions as well as for participation of foreign banks either as partners or share holders, in the credit institutions of the Republic of Estonia;

10.3. shall grant foreign banks the licence to set up bureaus and offices in the Republic of Estonia;

10.4. shall institute the mandatory regulations described in the Bank Law of the Republic of Estonia, shall impose economic sanctions in cases of inadherence to these norms;

10.5. shall consult with commercial banks and with unions and associations formed by them, before adopting any important decisions concerning credit institutions;

10.6. shall extend and receive credit;

10.7. shall define the form and deadline by which financial reports must be presented to it;

10.8. shall establish a procedure by which financial reports on profit and loss of credit institutions shall be made public;

10.9. shall conduct supervision of the activities of commercial banks and other credit institutions in accordance with the Bank Law of the Republic of Estonia.

11. Eesti Pank shall issue mandatory regulations to credit institutions as well as to other enterprises, institutions and organizations within the limits of its jurisdiction.

12. Eesti Pank shall have the right to present draft laws and decrees concerning currency circulation and banking to the highest body of state authority of the Republic of Estonia.

Chapter 4 Administration

14. Eesti Pank shall be administered by a Board comprised of the President of Eesti Pank and eight members of the Board.

15. The Chairman of the Board of Eesti Pank and the President of Eesti Pank shall be appointed by the highest body of state authority of the Republic of Estonia for a five year period. In carrying out his responsibilities, the President of Eesti Pank has the status of a member of the Government of the Republic of Estonia.

16. A member of the Board of Eesti Pank shall be appointed by the highest body of state authority of the Republic of Estonia for a period of five years. A member of the Board of Eesti Pank may not be a member of the Board or administration of another bank.

17. At least half of the Board of Eesti Pank must be present to adopt decisions. Decisions shall be adopted by simple majority, while at least three Board members must vote for the decision.

The respective commission of the highest body of state authority of the Republic of Estonia which shall supervise the activities of Eesti Pank, shall define the special circumstances under which the Board of Eesti Pank may adopt decisions with the support of only two Board members.

In case of a tie, the vote of the Chairman of the Board meeting shall decide.

18. Meetings of the Board of Eesti Pank shall take place at least once a month. The meetings of the Board shall be chaired by the Chairman of the Board or, in his/her absence, by another Board member as decided by the Board. Board meetings are convened by the Chairman, or in his/her absence, by his designated replacement.

19. The Board of Eesti Pank:

19.1. shall adopt major decisions concerning currency circulation and banking, including: establishing the procedure for conducting operations with foreign currency and precious metals, for founding commercial banks, for allowing foreign credit institutions to participate in credit institutions of the Republic of Estonia as share holders or partners, for the creation and usage of credit resource regulation funds and citizen's deposit insurance fund, the procedure for extending credit by Eesti Pank and the usage of foreign credit within the Republic of Estonia; shall decide questions concerning becoming a member of international credit and financial organizations as well as concerning the state debt of the Republic of Estonia; shall grant permission to audit credit institutions more than once a year; shall institute obligatory economic norms for commercial banks as well as penalties for their violation;

19.2. shall supervise the usage of the resources of Eesti Pank;

19.3. shall appoint and dismiss the Vice-Presidents, Directors and the Chief Accountant of Eesti Pank;

19.4. shall make the highest body of state authority of the Republic of Estonia suggestions concerning the adoption of legislative acts on currency circulation and banking.

20. The President of Eesti Pank

20.1. shall coordinate the work of Eesti Pank, including the usage of Eesti Pank resources;

20.2. shall appoint the heads of departments of Eesti Pank as well as the heads of institutions, enterprises and organizations subordinated to Eesti Pank;

20.3. shall determine the structure of Eesti Pank and shall create, reorganize and liquidate institutions, organizations and enterprises subordinated to Eesti Pank;

20.4. shall appoint a Vice-President to substitute for him during periods of absence.

20.5. shall define the functions of Vice-Presidents and Directors of Eesti Pank.

22. In their relations with other institutions, organizations and enterprises, the President, Vice President and Directors shall represent Eesti Pank without special authority in accordance with their functions.

23. The respective commission of the highest body of state authority of the Republic of Estonia shall supervise the activities of Eesti Pank.

24. The respective commission of the highest body of state authority of the Republic of Estionia:

24.1. shall appoint a three member auditing commission;

24.2. shall approve the annual report of Eesti Pank;

24.3. shall supervise the members of the Board of Eesti Pank in their compliance with the ethical norms of banking and business.

Chapter 5

Expenses, Revenues and Funds of the Bank

25. Eesti Pank shall conduct operations on the money market in fulfilling the basic tasks assigned to it. As a general rule, Eesti Pank shall not grant credit to nor serve citizens or non-banking enterprises, institutions or organizations of the Republic of Estonia. Exceptions for granting credit to and serving citizens and non-banking enterprises of the Republic of Estonia shall be decided upon by the Board of Eesti Pank.

26. The revenues of Eesti Pank shall comprise from the granting credits and guarantees, the discounting of promissory notes, the sale of securities, the sale of foreign exchange and from receipts on any other operations conducted within the rights and obligations assigned to Eesti Pank.

27. The expenses of Eesti Pank shall comprise from the receipt of loans and guarantees, the purchase of securities, the purchase of foreign currency and from any other operations conducted within the rights and obligations assigned to Eesti Pank in addition to its general maintenance costs.

28. Eesti Pank shall create a statutory fund, a reserve fund and a development fund.

29 The amount of statutory fund shall be determined by the highest body of state authority of the Republic of Estonia. The statutory fund shall be comprised from the state budget as well as from special funds.

30. The reserve fund shall be set from the profit of Eesti Pank until it is equal to the statutory fund. If the reserve fund is used to cover losses, new appropriations for the reserve fund shall be made until it reaches its required amount. At least 25% of the annual profit of Eesti Pank shall be transferred to the reserve fund.

31. After the reserve fund has been created and completed as described in Clause 30, the usage of the remaining profit will be decided by the decision of the highest body of state authority of the Republic of Estonia on the basis of the suggestion made by Eesti Pank.

32. Eesti Pank shall be free from taxes to be paid to state and local budgets.

Chapter 6 Final Provisions

33. Eesti Pank shall be located in Tallinn.

34. Eesti Pank shall issue yearly and monthly reports.

35. Eesti Pank and the enterprises, institutions and organizations subordinated to it shall have a stamp with the coat-of-arms of the Republic of Estonia.

36. Eesti Pank shall have the right to found subordinated enterprises to fulfill the functions assigned to it, including printing banknotes, producing necessary paper, minting coins, etc., and shall have the right to be either a shareholder or partner in these enterprises.

37. The activities of Eesti Pank shall be terminated by a decision of the highest body of state authority, which also determines the future usage of the property of Eesti Pank.

Adopted on March 15, 1990

Amendments on February 27, 1992

E E S T I P A N G A

P O H I K I R I

I peatükk

Ü L D S Ä T T E D

§ 1. Eesti Pank on Eesti Vabariigi keskpank, mis on loodud Eesti Vabariigi pangaseaduse alusel.

§ 2. Eesti Pank on iseseisev riiklik organisatsioon, mis annab oma tegevusest aru ainult Eesti Vabariigi kõrgeimale riigivõimuorganile. Eesti Pank juhindub oma tegevuses Eesti Vabariigi pangaseadusest, Eesti Vabariigi kõrgeima riigivõimuorgani otsustest ja käesolevast põhi- kirjast.

§ 3. Eesti Pank on isemajandav juriidiline isik, kes vastutab oma kohustuste eest kogu talle kuuluva varaga.

Eesti Pank ei vastuta Eesti Vabariigi kohustiste eest. Eesti Vabariik ei vastuta Eesti Panga kohustiste eest, välja arvatud juhud, mil Eesti Vabariik võtab endale sellise vastutuse.

§ 4. Algvariant: Eesti Pank teeb majanduspoliitika tähtsamates valdkondades koostööd Eesti NSV Valitsusega lähtudes Eesti Panga vastutusest raharingluse ja panganduse seisukorra eest Eesti NSV-s.

I muudatus: Eesti Pank informeerib tema poolt vastuvõetud raharinglust ja pangandust puudutavatest otsustest Eesti Vabariigi Valitsust. xx)

II peatükk

P O H I Ü L E S A N D E D

§ 5. Eesti Panga põhiülesanded on:

1) vabariigi majandusstrateegia väljatöötamine ja teostamine raharingluse, krediteerimise, finantseerimise, arvelduste ja valuutasuhete valdkonnas;

2) Eesti Vabariigi raha- ja krediidisüsteemi juhtimine;

3) stabiilse raharingluse tagamine;

4) rahvusliku valuuta ostuvõime tagamine ning vahetuskursi kindlaksmääramine teiste valuutade suhtes.

III peatükk

ÕIGUSED JA KOHUSTUSED

§ 6. Eesti Pank kasutab oma õigusi ja täidab kohustusi talle pandud ülesannete täitmiseks.

§ 7. Raharingluse korraldamise osas Eesti Pank:

1) organiseerib Eesti Vabariigi rahvusliku valuuta rahatähtede ja müntide valmistamist, nende vedu ja hoidmist;

2) laseb ringlusesse ja kõrvaldab sealt Eesti Vabariigi rahvusliku valuutat;

3) moodustab Eesti Vabariigi rahvusliku valuuta reservfondid ning määrab reservfonde hoidvad pangad;

4) määrab kindlaks teiste riikide valuutade kasutamise korra Eesti Vabariigi territooriumil ning Eesti Vabariigi juriidiliste ja üksikisikute poolt, lähtudes rahvusvahelistest lepingutest ning kokkulepetest vastavate riikide keskpankadega;

5) hoiab Eesti Vabariigi kullavarusid ning välisvaluuta riiklike reserve;

6) määrab kindlaks rahvusliku valuuta vahetatavuse tingimused teiste valuutade suhtes;

7) ostab ja müüb teiste riikide valuutat.

§ 8. Arvelduste ja krediteerimise osas Eesti Pank:

1) Algvariant: võib avada oma juures Eesti NSV, teiste liidu vabariikide ja välisriikide pankade arveldus-, korrespondent- ja muid kontosid Eesti NSV, teiste liiduvabariikide ja välisriikide pankades;

Muudatus: võib avada oma juures Eesti Vabariigi ja välisriikide pankade arveldus-, korrespondent- ja muid kontosid ning oma arveldus-, korrespondent- ja muid kontosid Eesti Vabariigi ja välisriikide pankades; ^{xx)}

2) annab loa arveldusvormide kasutamiseks Eesti Vabariigis;

3) kehtestab vastavalt kokkulepetele NSV Liidu Riigipanga ja teiste liiduvabariikide keskpankadega liiduvabariikidevaheliste arvelduste korra; /Tunnistada kehtivuse kaotanuks ^{xx)}/

4) kehtestab rahvusvahelistest kokkulepetest ja panganduspraktikast lähtudes välisarvelduste tegemise korra Eesti Vabariigis, teeb ise välisarveldusi ning võib anda kommertspankadele loa sooritada arveldusi välisriikide pankadega;

5) kustutab kommertsbankade vastastikuste maksete saadavate kui nad teevad arveldusi üksteise juures avatud korrespondentkontode arvelduspalatite kaudu;

6) kehtestab koos Eesti Vabariigi Rahandusministeeriumiga kommertsbankade poolt riigieelarve ja kohalike eelarvete kassalises täitmise operatsioonide sooritamise korra;

7) mõjustab oma käsutuses olevate vahenditega (majandusnormatiivid, antavate laenude protsendid, aktsiate, obligatsioonide ja muude väärtpaberite ost ja müük jms.) krediitide nõudmise ja pakkumise vahetorda;

8) reguleerib koos Eesti Vabariigi Rahandusministeeriumiga Eesti Vabariigi sise- ja välisvõlga, määrates kommertsbanku kaasates kindlaks riigilaenu allikad, tingimused ja muud tingimused;

9) koostab ja avaldab ülevaateid raharingluse ja panganduse olukorrast Eesti Vabariigis;

10) annab kommertsbankadele loa sooritada Eesti Vabariigi pangaseaduses loetlemata operatsioone;

§ 9. Välismajanduslegevuse osas Eesti Pank:

1) esindab Eesti Vabariigi huve suhetes teiste riikide kesk- ja kommertsbankadega, rahvusvahelistes pankades ning teistes rahandus- ja krediidiorganisatsioonides, kaasa arvatud Rahvusvaheline Valuutafond ja Rahvusvaheline Arveldusbank;

2) sõlmib krediidilepinguid (saab ja annab laene, annab ja diskoteerib veksleid, annab tagatise jms.) välisriikide ja rahvusvaheliste pankade ning rahandus- ja krediidiorganisatsioonidega ning osutab tasulisi teenuseid;

3) sõlmib välisriikide ja rahvusvaheliste pankadega korrespondent- ja muid lepinguid;

4) osaleb Eesti Vabariigi maksebilansi koostamisel;

5) jälgib kommertsbankade ning teiste ettevõtete ja organisatsioonide välisvõlgnevust ning rakendab vajaduse korral tarvilikke abinõusid vastavalt oma pädevusele.

§ 10. Suhetes kommertsbankade ja muude krediidiasutustega Eesti Pank:

1) annab asutamis- ja tegevuslubasid ning riiklikke litsentse raharingluse ja panganduse alal tegutsemiseks ning seadusandlusega ette nähtud juhtudel tühistab need;

2) kehtestab krediidiasutuste moodustamise korra ning välismaiste pankade osalemise korra Eesti Vabariigi krediidiasutustes osanike või aktsionäridena;

3) annab välisriikidele loa osakondade ja filiaalide avamiseks Eesti Vabariigis;

4) kehtestab Eesti Vabariigi pangaseadusega ette nähtud kohustuslikud majandusnormatiivid ja rakendab neist majandusnormatiividest mittekinnipidamisel majandussanktsioone;

5) konsulteerib enne krediitiasutusi puudutavate tähtsamate otsuste vastuvõtmist kommertsbankade ning nende poolt moodustatud liitude ja assotsiatsioonidega;

6) annab ja saab krediite;

7) määrab kindlaks talle esitatavate aruannete vormi ja tähtajad;

8) kehtestab krediitiasutuste bilansside ning kasumi ja kahjumi aruannete avaldamise korra;

9) teostab järelevalvet kommertsbankade ja muude krediitiasutuste tegevuse üle vastavat Eesti Vabariigi pangaseadusele.

§ 11. Eesti Pank annab oma pädevuse piires krediitiasutustele ning teistele ettevõtetele, asutustele ja organisatsioonidele kohustuslikke normatiivakte.

§ 12. Eesti Pangal on õigus esitada Eesti Vabariigi kõrgeimale riigivõimuorganile raharinglust ja pangandust käsitlevate seaduste ja otsuste projekte.

§ 13. Eesti Pank ei või olla Eesti NSV kommertsbankades osanikuks ega aktsionäriks.

Tunnistada kehtetuks. xx)

IV peatükk

J U H T I M I N E

§ 14. Eesti Panka juhib nõukogu, kuhu kuuluvad Eesti Panga president ja vähemalt neli nõunikku.

Muudatus: Eesti Panka juhib nõukogu, kuhu kuuluvad Eesti Panga president ja veel kaheksa nõukogu liiget. xx)

§ 15. Eesti Panga nõukogu esimeheks on Eesti Panga president, kelle nimetab viieks aastaks ametisse Eesti NSV kõrgeim riigivõimuorgan. Oma funktsioonide täitmisel on Eesti Panga presidendil Eesti NSV Valitsuse liikme staatus.

Muudatus: Eesti Panga nõukogu esimehe ja Eesti Panga presidendi nimetab viieks aastaks ametisse Eesti Vabariigi kõrgeim riigivõimuorgan. Oma funktsioonide täitmisel on Eesti Panga presidendil Eesti Vabariigi Valitsuse liikme staatus.^{x)}

§ 16. Eesti Panga nõukogu liige nimetatakse ametisse Eesti NSV kõrgeima riigivõimuorgani poolt viieks aastaks. Eesti Panga nõunikud nimetatakse ametisse Eesti Panga presidendi esildise alusel. Eesti Panga nõunikuks ei või olla teise panga nõukogu või juhatuse liige.

Muudatus: Eesti Panga nõukogu liikme nimetab ametisse Eesti Vabariigi kõrgeim riigivõimuorgan viieks aastaks. Eesti Panga nõukogu liikmeks ei või olla teise panga nõukogu või juhatuse liige.^{x)}

§ 17. Eesti Panga nõukogu on otsustusvõimeline, kui kohal on vähemalt pooled nõukogu liikmed. Nõukogu võtab otsuseid vastu lihthäälteenamusega, kusjuures otsuse poolt peab olema vähemalt kolm nõukogu liiget.

Eesti Panga tegevuse üle järelvalvet teostav Eesti Vabariigi kõrgeima riigivõimuorgani vastav komisjon määrab kindlaks, millistes eriolukordades on võimalik Eesti Panga nõukogu otsuseid vastu võtta kahe nõukogu liikme poolt.

Häälte võrdse jagunemise korral on otsustavaks nõukogu istungi juhataja hääl.

§ 18. Eesti Panga nõukogu istungid toimuvad vähemalt üks kord kuus. Nõukogu istungeid juhatab Eesti Panga nõukogu esimees, tema äraolekul aga üks nõukogu liikmeist vastavalt nõukogu otsusele. Nõukogu istung kutsutakse kokku nõukogu esimehe, tema äraoleku ajal aga nõukogu esimeest asendava nõukogu liikme poolt.

§ 19. Eesti Panga nõukogu:

1) võtab vastu raharinglust ja pangandust puudutavad tähtsamad otsused, sealhulgas kehtestab välisvaluuta ja väärismetallidega pangaoperatsioonide sooritamise, kommertsbankade moodustamise, välismaiste krediidasutuste aktsionärina või osanikuna Eesti NSV krediidasutustes osalemise, krediidiressursside reguleerimise fondi ning kodanike hoiuste kindlustamise fondi moodustamise ja kasutamise, Eesti Panga poolt krediitide andmise ja väliskrediitide Eesti NSV-s kasutamise reguleerimise korra, otsustab Eesti NSV riigivõlga ning rahvusvaheliste rahandus- ja krediidiorganisatsioonide liikmeksastumisega seotud küsimusi, annab loa krediidasutuste kontrollimiseks sagedamini kui üks kord aastas, kehtestab kommertsbankadele kohus-

Muudatus: 1) võtab vastu raharinglust ja pangandust puudutavad tähtsamad otsused, sealhulgas kehtestab välisvaluuta ja väärismetallidega tehingute sooritamise, kommertsbankade moodustamise, välismaiste krediitiasutuste aktsionärina või osanikuna Eesti Vabariigi krediitiasutustes osalemise, krediitiresursside reguleerimise fondi ning kodaniku hoiuste kindlustamise fondi moodustamise ja kasutamise, Eesti Panga poolt krediidide andmise ja väliskrediitide Eesti Vabariigis kasutamise reguleerimise kohta, otsustab Eesti Vabariigi riigivõlga ning rahvusvaheliste rahandus- ja krediidiorganisatsioonide liikmeksastumisega seotud küsimusi, annab loa krediitiasutuste kontrollimiseks saagedamini kui üks kord aastas, kehtestab kommertsbankadele kohustuslikud majandusnormatiivid ning majandussanktsioonid nende rikkumiste puhul;^{xx)}

2) otsustab Eesti Panga vahendite kasutamise;

Muudatus: teostab järelevalvet Eesti Panga vahendite kasutamise üle;^{xx)}

3) nimetab ametisse ja vabastab ametist Eesti Panga pearaamatupidaja ja direktorid ning määrab nende kompetentsi;

Muudatus: nimetab ametisse ja vabastab ametist Eesti Panga asepresidendid, direktorid ja pearaamatupidaja;^{xx)}

4) teeb Eesti Vabariigi kõrgeimale riigivõimuorganile ettepanekuid raharinglust ja pangandust käsitlevate aktide vastuvõtmiseks.

§ 20. Eesti Panga president:

1) organiseerib ja korraldab Eesti Panga tööd;

Muudatus: korraldab Eesti Panga tööd, sealhulgas Eesti Panga vahendite kasutamist;^{xx)}

2) nimetab ametisse Eesti Panga struktuuriüksuste juhatjad ning Eesti Pangale alluvate asutuste, ettevõtete ja organisatsioonide juhid;

3) määrab kindlaks Eesti Panga struktuuri ning moodustab, reorganiseerib ja likvideerib Eesti Pangale alluvaid asutusi, organisatsioone ja ettevõtteid;

4) määrab oma äraoleku ajaks ennast asendama ühe direktoritest;

Muudatus: määrab oma äraoleku ajaks ennast asendama ühe asepresidentidest;^{xx)}

Täiendav: 5) määrab asepresidentide ja direktorite kompetentsi.^{xx)}



§ 21. Eesti Panga direktor juhib Eesti Panga struktuuriüksuste tööd.

Tunnistada kehtetuks. xx)

§ 22. Suhetes teiste asutuste, organisatsioonide ja ettevõtetega esindavad Eesti Panka ilma erivolitusteta president, nõunikud ja direktorid vastavalt oma pädevusele.

Muudatus: Suhetes teiste asutuste ja muude organisatsioonidega esindavad Eesti Panka ilma erivolitusteta president, asepresidendid ja direktorid enda kompetentsi piires. Allkirja õiguse panga nimel pangaoperatsioonidesooritamiseks annab pangaametnikele president. xx)

§ 23. Järelevalvet Eesti Panga tegevuse üle teostab Eesti Vabariigi kõrgeima riigivõimuorgani vastav komisjon.

§ 24. Eesti Vabariigi kõrgeima riigivõimuorgani vastav komisjon:

- 1) määrab ametisse kolmeliikmelise Eesti Panga revisjoni-komisjoni;
- 2) kinnitab Eesti Panga aastaaruande;
- 3) jälgib pangandus- ja ärialastest eetilistest normidest kinnipidamist Eesti Panga nõukogu liikmete poolt.

V peatükk

PANGA TULUD, KULUD JA FONDID

§ 25. Eesti Pank sooritab rahaturul operatsioone talle pandud põhiülesannete täitmiseks. Üldjuhul Eesti Pank ei krediteeri ega teeninda kodanikke ning Eesti Vabariigi mittepanganduslikke ettevõtteid, asutusi ja organisatsioone. Otsuse erandkorras kodanike ja Eesti Vabariigi mittepanganduslike ettevõtete krediteerimise või teenindamise kohta langetab Eesti Panga nõukogu.

§ 26. Eesti Panga tulud moodustuvad laenude ja tagatiste andmisest, vekslite diskonteerimisest, väärtpaberite müügist, teiste riikide valuuta müügist ning muudest Eesti Panga õigustest ja kohustustest tulenevate operatsioonide teostamisel saadavatest tuludest.

§ 27. Eesti Panga kulud moodustavad laenude ja tagatiste saamisest, väärtpaberite ostmisest, teiste riikide valuutade ostmisest ja muude Eesti Panga õigustest ja kohustustest tulenevate operatsioonide teostamise

kuludest ning Eesti Panga ülalpidamiskuludest.

§ 28. Eesti Pangas moodustatakse põhikirjafond, reservfond ja Eesti Panga arendamise fond.

§ 27. Põhikirjafondi suuruse määrab kindlaks Eesti Vabariigi kõrgeim riigivõimuorgan. Põhikirjafond moodustub riigieelarve eraldistest ning sihtotstarbelistest laekumistest.

§ 30. Reservfond moodustatakse Eesti Panga kasumist, kuni reservfondi suurus võrdsustub põhikirjafondi suurusega. Kui reservfondi kasutatakse kahjumite katmiseks, tehakse reservfondi uusi eraldisi, kuni reservfond saavutab ettenähtud suuruse. Reservfondi kantakse vähemalt 25 % Eesti Panga aastakasumist.

Muudatus: Pärast reservfondi moodustamist ettenähtud ulatuses kantakse Eesti Panga vaba kasum Eesti NSV riigieelarvesse.

Jätta välja xx)

§ 31. Eesti Panga kasum suunatakse reservfondi täiendamiseks, Eesti Panga arendamise fondi täiendamiseks ning käesoleva põhikirja paragrahvis 30 kehtestatud korras Eesti NSV riigieelarvesse.

Muudatus: Pärast käesoleva põhikirja § 30 kohaselt reservfondi moodustamist ja täiendamist järelejääva vaba kasumi kasutamine määratakse Eesti Panga nõukogu esildisel Eesti Vabariigi kõrgeima riigivõimuorgani otsusega.xx)

§ 32. Eesti Pank on vabastatud masetest Eesti Vabariigi riigieelarvesse ja kohalikesse eelarvetesse.

VI peatükk

L O P P S Ä T T E D

§ 33. Eesti Pank asub Tallinnas.

§ 34. Eesti Pank avaldab oma aastaaruande ning kuuaruanded.

§ 35. Eesti Pangal ning talle alluvatel asutustel, organisatsioonidel ja ettevõtetel on Eesti Vabariigi riigivapi kujutisega pitsat.

§ 36. Eesti Pangal on õigus moodustada enda alluvuses ettevõtteid, mis

metallraha valmistamine jne. ning olla niisugustes ettevõtetes osanikuks või aktsionäriks.

§ 37. Eesti Panga tegevus lõpetatakse Eesti Vabariigi kõrgeima riigivõimuorgani otsuse alusel, millega määratakse ka Eesti Panga varade edasine kasutamine.

Asendada põhikirja tekstis "Eesti NSV" sõnadega "Eesti Vabariik" x)

Asendada põhikirja tekstis sõna "nõunik" sõnaga "nõukogu liige" vastavas käändes xx)

Muudatused:

- x) EV Ülemnõukogu otsus 15.03.90.a. /RT nr.2(2) 9.07.90 art.37/
- xx) EV Ülemnõukogu otsus 27.02.92.a.

**TELEX CORRESPONDENCE FROM DEUTSCHEBANK
REGARDING BANK LAW AND STATUTES
OF THE BANK OF ESTONIA, 3/13/92**

TRANSLATED INTO ENGLISH.

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COMPUTER TELEX - DO NOT INTERRUPT

FROM: DEUTSCHE BUNDESBANK
FRANKFURT AM MAIN
TO: BANK OF ESTONIA
TALLINN
DATE: 03/13/92
REF: R11/I

TO MR. SIIM KALLAS, CHAIRMAN
PART 1
RE: ESTONIAN BANK LAW AND THE CHARTER OF THE ESTONIAN CENTRAL
BANK

DEAR MR. CHAIRMAN,
WE ARE RESPONDING TO YOUR LETTER TO OUR VICE-CHAIRMAN DR.
TIETMEYER DATED 2/11/92, AND WE HAVE THE FOLLOWING GENERAL
COMMENTS REGARDING THE AFOREMENTIONED LAW AND CHARTER:

1.

WE DO NOT KNOW WHAT LEGAL STATUS THE CHARTER OF YOUR CENTRAL BANK
HAS, SINCE IT WAS ENACTED BY PARLIAMENTARY DECREE. SINCE NO. 1
OF THE CHARTER STATES THAT THE CENTRAL BANK IS BASED UPON THE
BANK LAW (CF. NO. 2), WE ASSUME THAT A CHARTER BASED ON A LAW HAS
ONLY A SUPPLEMENTARY, SUBORDINATE LEGAL STATUS. THE BANK LAW
REFERS TO THE "STATUTE" OF THE BANK.

IT IS OUR OPINION THAT SPECIAL IMPORTANCE OF THE CENTRAL BANK IN
ACHIEVING A FUNCTIONING MONETARY SYSTEM, WHICH IS THE BASIS OF A
SUCCESSFUL FREE MARKET ECONOMY, REQUIRES THAT THE FUNCTION AND
ACTIVITY OF THE CENTRAL BANK BE FOUNDED ON A SEPARATE LAW, I.E.
ON A CENTRAL BANK LAW, WHICH EXHAUSTIVELY SETS FORTH ALL
SUBSTANTIVE PRINCIPLES APPLICABLE TO THE CENTRAL BANK. IN OUR
OPINION, A CHARTER CAN ONLY REGULATE SUCH FORMAL DETAILS AS
MATTERS OF PROCEDURE (CF. PARA 34 OF THE LAW ON THE GERMAN
BUNDESBANK. OUR CHARTER CONTAINS REGULATIONS, FOR EXAMPLE,
CONCERNING MEETINGS OF THE MANAGEMENT COMMITTEES OF THE BANK,
I.E. MEETINGS OF THE CENTRAL BANK BOARD, THE MANAGING BOARD AND
THE ADVISORY BOARDS, SPECIFICALLY QUESTIONS OF MEETING CALLS,
QUORUMS, REQUIRED MAJORITIES, AND SO ON).

THUS YOU MIGHT CONSIDER PURSUING A COMPREHENSIVE CENTRAL BANK LAW
FOR THE CENTRAL BANK OF ESTONIA. THIS WOULD ALSO SERVE TO CLEAR
UP THE LEGAL BASIS OF THE CENTRAL BANK. CERTAIN POSSIBLE
OVERLAPS WOULD BE AVOIDED.

THE CREATION OF A SEPARATE CENTRAL BANK LAW WOULD ENTAIL
TRANSFERRING THE BASIC REGULATIONS CURRENTLY CONTAINED IN THE
BANK LAW GOVERNING THE CENTRAL BANK TO SUCH A CENTRAL BANK LAW.
THIS APPLIES IN PARTICULAR TO THE TRANSFER OF FUNCTIONS AND TASKS
SET FORTH THEREIN, INCLUDING ISSUING CURRENCY AND COINS AS LEGAL
TENDER (SEE INTRODUCTION TO THE BANK LAW, NOS. 8-11, 23, 56), AND
TO THE INDEPENDENCE OF THE CENTRAL BANK AND ITS RELATIONSHIP TO

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COMPUTER TELEX - DO NOT INTERRUPT

FROM: DEUTSCHE BUNDESBANK
FRANKFURT AM MAIN
TO: BANK OF ESTONIA, TALLINN
DATE: 03/13/92
REF: R11/II

AND TO THE PUBLICATION OF THE ANNUAL REPORT AND FINANCIAL STATEMENTS (NO. 7.5.)

THE CURRENT BANK LAW WOULD CONTINUE TO EXIST AND WOULD IN THE FUTURE BE CONFINED TO REGULATING THE ACTIVITY OF THE COMMERCIAL BANKS AMONG THEMSELVES AND IN RELATION TO CUSTOMERS, AND DETERMINING THE POWERS OF THE CENTRAL BANK TO REGULATE BANKING AND SUPERVISE BANKS.

IN FACT, THE AREAS COVERED BY THE CURRENT BANK LAW ARE REGULATED BY A VARIETY OF LAWS IN OUR COUNTRY, PARTICULARLY THE LAW GOVERNING THE BANKING INDUSTRY, THE CIVIL CODE, AND THE COMPETITION LAW; THE PRINCIPLES APPLICABLE TO THE CENTRAL BANK ARE SET DOWN IN THE LAW GOVERNING THE GERMAN BUNDESBANK (BUNDESBANK LAW).

THE CREATION OF A SELF-SUFFICIENT CENTRAL BANK LAW FOR THE CENTRAL BANK OF ESTONIA WOULD ALSO TAKE INTO ACCOUNT THE AUTHORITY OF THE CENTRAL BANK OVER THE COMMERCIAL BANKS AS AN INDEPENDENT GOVERNMENTAL INSTITUTION. WE ARE ATTACHING TO THIS LETTER THE "DRAFT STRUCTURE" FOR A CENTRAL BANK LAW PREPARED BY US AT AN EARLIER DATE.

2. FURTHERMORE, WE WOULD LIKE TO POINT OUT THAT IT WOULD BE IMPORTANT FOR THE STATUS OF THE CENTRAL BANK AND ITS LEGAL FOUNDATION -- IF POLITICALLY POSSIBLE -- TO ANCHOR THE CENTRAL BANK IN THE ESTONIAN CONSTITUTION. OUR CONSTITUTION, WHICH IS CALLED THE GRUNDGESETZ [BASIC LAW], PROVIDES SUCH A CONSTITUTIONAL ANCHORING FOR THE GERMAN BUNDESBANK. IT PROVIDES A CONSTITUTIONAL GUARANTEE FOR THE GERMAN BUNDESBANK'S CONTINUED EXISTENCE AS AN INSTITUTION, FOR ITS ROLE AS THE BANK OF ISSUE, AND FOR ITS ENDOWMENT WITH SUFFICIENT MONETARY POLICY TOOLS TO CARRY OUT ITS TASKS.

3. IN OUR VIEW, THERE ARE FOUR CORE ELEMENTS THAT A CENTRAL BANK -- WHICH IS TO BE EFFECTIVE, AND THEREFORE ULTIMATELY SUCCESSFUL IN THE GENERAL INTEREST -- MUST POSSESS:

A) A CLEAR SET OF OBJECTIVES, AMONG WHICH THE OBJECTIVE OF CURRENCY STABILITY, IN THE SENSE OF MAINTAINING A STABLE PRICE STRUCTURE, IS MOST IMPORTANT (SEE ART. 105 EEC TREATY, NEW

VERSION, (N.F.), ART. 2 ET SEQQ. OF THE STATUTE OF THE FUTURE
EUROPEAN CENTRAL BANK (EZB); PARA. 3 OF THE BUNDESBANK LAW);

B) INDEPENDENCE, THAT IS, EXEMPTION FROM THE AUTHORITY OF ANY
GOVERNMENTAL ORGANS IN THE FULFILLMENT OF ITS MONETARY POLICY
OBJECTIVES (SEE ART. 107 EEC-T N.F., ART. 7 ECB-STATUTE; PARA 12
ET SEQ. BUNDESBANK LAW);

C) PROHIBITION OR LIMITATION ON FINANCING THE GOVERNMENT SEE ART.
104 EEC-T N.F., ART 21 ECB-STATUTE; PARA 20 SECTION 1 NO. 1 OF
THE BUNDESBANK LAW.

D) SUFFICIENT MONETARY POLICY TOOLS TO IMPLEMENT ITS OBJECTIVES
(CF. ART. 105 A EEC-T, ART. 16 ET SEQQ. ECB-STATUTE; PARA 14 ET
SEQQ. BUNDESBANK LAW).

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PART III

APPENDIX

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COMPUTER TELEX - DO NOT INTERRUPT

FROM: DEUTSCHE BUNDESBANK
FRANKFURT AM MAIN
TO: BANK OF ESTONIA, TALLINN
DATE: 03/13/92
REF: R11/IIIA

WE ARE GLAD TO MAKE REFERENCE IN THIS CONNECTION TO THE REGULATIONS FOR THE FUTURE EUROPEAN CENTRAL BANK, BECAUSE THESE REGULATIONS HAVE BEEN WORKED OUT BY THE GOVERNORS OF THE CENTRAL BANKS OF THE 12 EC MEMBER COUNTRIES AND THEREFORE THEY REPRESENT A GENERALLY VALID CONSENSUS OF EXPERTS CONCERNING THE MAKE-UP OF A MODERN CENTRAL BANK.

IN PARTICULAR WE WOULD LIKE TO MAKE THE FOLLOWING COMMENT AS A SUPPLEMENT TO THE AFOREMENTIONED BASIC POINTS A) THROUGH D)

RE A):

BY MAKING THE OBJECTIVE OF GUARANTEEING PRICE STABILITY THE TOP PRIORITY OF THE EUROPEAN CENTRAL BANK, IT WAS GENERALLY ACKNOWLEDGED THAT THE STABILITY OF THE VALUE OF MONEY IS THE INDISPENSABLE BASIS FOR SUCCESSFUL FUNCTIONING OF A FREE MARKET ECONOMY. HEREIN IS EXPRESSED THE HISTORICALLY GROUNDED RECOGNITION THAT EVEN RELATIVELY MILD INFLATION IS ULTIMATELY DETRIMENTAL TO PRODUCTIVITY AND TO THE EMPLOYMENT STATUS OF THE POPULATION.

AS RELATES TO THE ESTONIAN CENTRAL BANK, THE GOAL OF STABILITY IS EXPRESSED IN NO. 8.1.3 OF THE BANK LAW AND NO. 5.4) OF THE CHARTER (IN WHICH THE CENTRAL BANK IS GIVEN AUTHORITY TO SET FOREIGN EXCHANGE RATES).

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COMPUTER TELEX - DO NOT INTERRUPT

FROM: DEUTSCHE BUNDESBANK
FRANKFURT AM MAIN
TO: BANK OF ESTONIA, TALLINN
DATE: 03/13/92
REF: R11/II

PART IV

MOREOVER, THE TASKS OF THE CENTRAL BANK ARE SET FORTH IN NOS. 7.3, 8 TO 11, AND 23 OF THE BANK LAW AND IN NO. 5.1) TO 5.3), AND 6 TO 11 OF THE CHARTER. IN OUR OPINION THE IMPORTANT TASK OF SUPERVISING THE COMMERCIAL BANKS SHOULD BE INCLUDED IN A GENERAL FORM AMONG THE "BASIC AIMS" OR "MAIN FUNCTIONS" (ART. 56 OF THE BANK LAW).

RE B)

IT IS FAIRLY OBVIOUS THAT IN ORDER FOR THE MANAGING COMMITTEES OF A CENTRAL BANK REALLY TO BE IN A POSITION TO IMPLEMENT A MONETARY POLICY STABILITY, THEY MUST -- IN THE FULFILLMENT OF THEIR MONETARY POLICY TASKS -- BE EXEMPT FROM INSTRUCTIONS FROM POLITICAL ORGANS. ONLY A CENTRAL BANK THAT IS INDEPENDENT IN THIS SENSE CAN GUARANTEE STABILITY IN THE VALUE OF MONEY THROUGH A STABLE AND CONFIDENCE-BUILDING MONETARY POLICY. EMPIRICAL STUDIES PROVE THAT NATIONS THAT HAVE HAD INDEPENDENT CENTRAL BANKS HAVE GENERALLY ALWAYS BEEN MORE SUCCESSFUL IN THE AREA OF CURRENCY STABILITY. THE CENTRAL BANK MUST BE IN A POSITION TO IMPLEMENT ITS POLICIES FOR STABILITY, WHICH IN PRINCIPLE ARE ALWAYS ORIENTED TO THE LONG TERM, EVEN IN THE FACE OF OPPOSING INTERESTS OF A POLITICAL NATURE, WHICH ARE USUALLY ORIENTED TO THE SHORT TERM. THE PRINCIPLE OF THE INDEPENDENCE OF THE CENTRAL BANK IS EXPRESSED MOST UNEQUIVOCALLY IN ART. 7 OF THE ECB STATUTE.

IN ART. 7.1 OF THE BANK LAW AND NO. 2 OF THE CHARTER THE ESTONIAN CENTRAL BANK IS CALLED AN "INDEPENDENT STATE ORGANIZATION," WITHOUT SPECIFYING THIS IN ANY MORE DETAIL. ITS RELATIONSHIP TO THE GOVERNMENT AND THE PARLIAMENT SHOULD BE SET FORTH IN A MORE CLEAR WAY. WHAT DOES "GIVE AN ACCOUNT" MEAN IN ART. 7.1 OF THE BANK LAW AND NO. 2 OF THE CHARTER? WAS DOES "COOPERATE WITH THE GOVERNMENT" MEAN IN NO. 4 OF THE CHARTER? IS THE OBLIGATION TO SUPPORT THE ECONOMIC POLICY OF THE STATE, AS PROVIDED IN ART. 8.2 OF THE BANK LAW, SUBJECT TO THE PROVISION THAT THE BANK'S OWN DUTY TO MAINTAIN STABILITY HAS PRIORITY (CF. ART. 2 OF THE ECB STATUTE, PARA. 12 SENTENCE 1 OF THE BUNDESBANK LAW)?

GIVEN THE POSSIBILITY OF CONFLICTS OF INTEREST BETWEEN THE POLITICAL SECTOR AND THE CENTRAL BANK, AND THE RESULTING NECESSITY THAT THE CENTRAL BANK BE INDEPENDENT, IT IS DISTURBING

TO SEE THAT ACCORDING TO ART. 7.2 OF THE BANK LAW, THE FINANCE MINISTER IS AUTOMATICALLY A MEMBER OF THE BOARD AND ACCORDING TO NO. 15 OF THE CHARTER THE CHAIRMAN OF THE CENTRAL BANK IS A MEMBER OF THE GOVERNMENT. EVEN IF THE CHAIRMAN AND THE OTHER MEMBERS OF THE COUNCIL ARE APPOINTED BY PARLIAMENT (FOR ONLY FIVE YEARS), THEIR INDEPENDENCE IN THE FULFILLMENT OF THE ECONOMIC OBJECTIVES OF THE CENTRAL BANK WOULD HAVE TO BE GUARANTEED.

WHAT IS THE MEANING OF "SHALL OVERSEE THE ACTIVITIES" OF THE CENTRAL BANK (NO. 17 SECTION 2 OF THE CHARTER)? WHAT DOES IT MEAN THAT PARLIAMENT CAN PASS "DECREES" CONCERNING THE BANK'S ACTIVITIES (NO. 2 SECTION 2 OF THE CHARTER)? IS NOT TOO DIRECT AN INFLUENCE OF THE INVESTIGATION COMMITTEE OF PARLIAMENT OVER THE ACTIVITY OF THE CENTRAL BANK A THING TO BE FEARED (NO. 24, 3) OF THE CHARTER)? INVESTIGATION OF THE CENTRAL BANK SHOULD NEVER BE ALLOWED TO EXTEND TO THE MONETARY POLICY DECISIONS OR TO NECESSARY USE OF MONETARY POLICY TOOLS.

RE C):

PROBABLY THE MOST IMPORTANT REQUIREMENT FOR A POLICY OF STABILITY CONSISTS OF THE CENTRAL BANK NOT BEING RESPONSIBLE TO FINANCE THE STATE OR ITS DEBT. THE NEW EC REGULATIONS STIPULATE AN ABSOLUTE PROHIBITION AGAINST THE FINANCING OF ANY STATE BY THE CENTRAL BANK AND SCARCELY ALLOW FOR [ILLEGIBLE] REGULATIONS TO ACCOMPLISH A [ILLEGIBLE] [ILLEGIBLE].

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FROM: DEUTSCHE BUNDESBANK
FRANKFURT AM MAIN
TO: BANK OF ESTONIA, TALLINN
DATE: 03/13/92
REF: R11/5

PART V

IN CONTRAST, THE BUNDESBANK LAW (PARAGR. 20 SECTION 1 NO. 1) ALLOWS THE GERMAN BUNDESBANK TO PROVIDE THE FEDERAL GOVERNMENT AND THE STATE GOVERNMENTS [LÄNDER] WITH SO-CALLED "CASH LOANS" FOR UP TO A STIPULATED MAXIMUM DM-AMOUNT AT INTEREST. THESE ARE LOANS THAT MAY BE USED SHORT-TERM AS A BRIDGE TO ANTICIPATED GOVERNMENTAL REVENUES.

AS FAR AS YOUR CENTRAL BANK IS CONCERNED, IN THIS REGARD THE MEANING OF THE PROVISIONS OF ART. 10.1 OF THE BANK LAW AND IN NO. 8, 6) TO 8) IS NOT CLEAR. DOES NO. 25 OF THE CHARTER HAVE ANY SIGNIFICANCE IN THIS CASE?

RE D)

FINALLY, IT IS ALSO CLEAR THAT IN ORDER TO REALIZE ITS GOALS OR TO FULFILL ITS LEGAL RESPONSIBILITIES, A CENTRAL BANK MUST BE EQUIPPED WITH SUFFICIENT POLICY TOOLS. WITH REGARD TO THE ACCOMPLISHMENT OF ITS PRIMARY OBJECTIVE, NAMELY THE MAINTENANCE OF PRICE STABILITY, THE MAIN CONCERN IS TO BE ABLE TO CONTROL THE MONEY SUPPLY, PARTICULARLY BY CONTROLLING BANK LIQUIDITY. PARTICULARLY IMPORTANT IN THIS CONNECTION ARE ITS MONOPOLY ON THE PRINTING OF MONEY, ITS CREDIT AND OPEN MARKET BUSINESS AND THE RELATED ACTIVITIES, AND IN ADDITION, THE INSTITUTION OF THE RESERVE REQUIREMENT (ART. 16 TO 20 ECB STATUTE, PARA. 14 TO 22 OF THE BUNDESBANK LAW).

IN THIS REGARD THE PROVISIONS OF THE BANK LAW ALONG WITH THOSE OF THE CHARTER SHOULD PROVIDE AN ADEQUATE POLICY TOOL FRAMEWORK (PARTICULARLY ART. 8, 11, 23 OF THE BANK LAW, NO. 6 ET SEQQ., AND NO. 19 ET SEQQ. OF THE CHARTER).

4. FINALLY, ANOTHER COMMENT ON ART. 9.1. OF THE BANK LAW. THIS PROVISION APPEARS TO MEAN THAT THE CENTRAL BANK COULD LIMIT THE PRINTING OF CASH MONEY. SUCH A MEASURE IS ALIEN TO A CENTRAL BANK ORIENTED TOWARD A MARKET ECONOMY. THE CENTRAL BANK MUST ALWAYS BE READY AND ABLE TO ISSUE MONEY WITHOUT RESTRICTION IN ORDER TO COVER BALANCES OUTSTANDING ON ITS BOOKS. OTHERWISE THE SYSTEM OF CASH CURRENCY OR TRADE BY CASH PAYMENT MIGHT BE DISTURBED, AND GENERAL FAITH IN THE CENTRAL BANK AND THE MONEY ISSUED BY IT COULD BE SHAKEN.

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FURTHER DETAILED QUESTIONS CANNOT BE ANSWERED IN WRITING, BUT RATHER THEY MUST BE DISCUSSED IN PERSONAL MEETINGS.

FOR THIS PURPOSE IT IS PLANNED, SUBJECT TO YOUR AGREEMENT, THAT DR. GERD EICHHORN AND DR. JUERGEN BORNHOEVD WILL COME TO TALLINN FOR A TWO-DAY VISIT, FROM THE 8TH TO THE 10TH OF APRIL. MR. GIERENSTEIN WILL BE HAPPY TO WORK OUT THE DETAILS WITH YOU.

WE ASSUME THAT MR. GIERENSTEIN LEFT YOU A COPY OF THE BUNDESBANK LAW AND THE GERMAN LAW GOVERNING THE BANKING INDUSTRY AT THE TIME OF HIS VISIT. THE PROVISIONS OF THE EUROPEAN COMMUNITY LAW CITED IN THIS COMMUNICATION WILL BE GIVEN TO YOU AT THE TIME OF THE VISIT ANNOUNCED ABOVE.

KIND REGARDS,
DEUTSCHE BUNDESBANK
WAHLIG DR. BERNHOEVD

APPENDIX

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ESTONIAN LAW ON BANKRUPTCY, 6/10/92

ENGLISH

**Resolution
of the Supreme Soviet of the Republic of Estonia
on the Application of the Law on Bankruptcy**

The Supreme Soviet of the Republic of Estonia resolves:

1. To enact the Law on Bankruptcy of the Republic of Estonia (hereinafter: Law) as of September 1, 1992.
2. The term "legal person" shall include economic associations without the status of a legal person in the Law.
3. The place of residence of a private person shall be interpreted as the permanent or main residing place. In case it should be impossible to establish such a place, the place with which the person is in personal or economic ties shall be considered to be his place of residence. The country of the person's citizenship shall be considered to be his place of residence in case the person has more than one places of residence according to the above criteria.
4. The stipulations concerning the recovery of property (§ 42-48) shall be enacted to be retroactive.
5. The Law on Civil Lawsuits shall be applied up to the passing of Laws on Civil Justice and Execution of Judgement mentioned in § 2.4 unless otherways stipulated in the Law on Bankruptcy.
6. Oblige the Estonian Bank to submit a bill on the enactment of special stipulations concerning the insolvency of banks and other credit institutions determined in § 6.3 before July 15, 1992.
7. Oblige the Estonian Government to:
 - 1) guarantee the possibility of publication of announcements in connection of the Law in writing press.
 - 2) organize the training of Bankruptcy Administrators and determine their qualification standards;
 - 3) enact the text of the oath stipulated in § 37.
 - 4) determine a tax from the carrying out of Bankruptcy Proceedings and putting into formal order of documents;

- 5) submit proposals as to the bringing into accordance of current Laws of the Republic of Estonia with the Law on Bankruptcy as well as a bill enacting special stipulations in cases of insolvency of insurance companies determined in § 6.3;
- 6) bring the decrees and other norm documents into accordance with the Law on Bankruptcy of the Republic of Estonia;
- 7) start the preparations to compile the Civil Legislation based on the draft law completed by 1946.

Signed by.

Arnold Ruitel
 Chairman of the Supreme Soviet of
 the Republic of Estonia

as of July 6, 1992

Translation from Estonian to English by *[Signature]* T. Agur

**LAW ON BANKRUPTCY
OF THE
REPUBLIC OF ESTONIA**

I GENERAL REGULATIONS

1 Concept of Bankruptcy

1.1 Bankruptcy in this Law shall be interpreted as the Debtor's insolvency as declared by a Court judgement.

1.2 The Debtor shall be considered insolvent in case of inability to meet the Creditor's claims and this state cannot be considered to be temporary taking into account the Debtor's economic standing.

2 Bankruptcy Proceedings

2.1 The Creditor shall acquire the right to satisfy his claims from the Debtor's property by the Bankruptcy Procedure in the manner regulated by this Law

2.2 Bankruptcy Proceedings shall start with the submission of the Bankruptcy Declaration to the Court and end with procedures regulated in § 92.

2.3 Bankruptcy Proceedings shall be carried out in and out of Court in the manner regulated by this Law.

2.4 The Laws on Civil Procedure and Carrying out the Judgement shall be followed in Bankruptcy Proceedings unless this Law should state otherways.

3 Debtor of Bankruptcy

3.1 The Debtor of Bankruptcy (hereinafter: Debtor) is a legal or private

person declared to be insolvent by a Court of Law.

3.2 Governmental and municipal bodies cannot be declared insolvent.

4 Creditor of the Bankruptcy

4.1 The Creditor of the Bankruptcy (hereinafter: Creditor) is a legal or private person who has the right of claim against the Debtor.

4.2 In case of tax debts governmental or municipal bodies shall act as Creditors.

5 Jurisdiction

Bankruptcy matters shall belong under the jurisdiction of country or town Courts according to the place of permanent residence (private person) or location (legal person) of the Debtor.

6 Validity of the Law

6.1 This Law shall be valid to Debtors with a permanent place of residence (private persons) or location (legal persons) in the Republic of Estonia.

6.2 Similar rules shall be valid to private and legal persons unless specifically regulated otherways by this Law.

6.3 In the event of insolvency of banks, other credit institution and insurance companies this Law shall be applied only together with special regulations of other Laws.

6.4 In case of insolvency of certain Debtors special regulations can be enacted.

II DECLARATION OF BANKRUPTCY

7 Submission of Bankruptcy Declaration

The Bankruptcy Declaration can be submitted by the Debtor or the Creditor and in cases of the Debtor's demise the inheritor or the administrator of the Debtor's estate.

8 The Debtor's Bankruptcy Declaration and List of Debts

8.1 The Debtor shall personally add a List of his Debts to the Bankruptcy Declaration containing information about his property and Creditors.

8.2 The Debtor's obligation to submit a Bankruptcy Declaration can be enacted.

8.3 The declaration of a legal person's bankruptcy can be sought by the owner, board, administrative council, liquidation committee, or other person or body regulated by the Statutes or other normative documents.

9 The Creditor's Bankruptcy Declaration

9.1 The Creditors shall submit a Bankruptcy Declaration under the following circumstances:

- 1) the Debtor has wilfully caused his insolvency by criminal offences or
- 2) the Debtor is destroying, secreting or spending his property or takes other action that has caused him to become insolvent or
- 3) in case forced execution proceedings are being applied to the Debtor's property and it has been impossible to carry it out within a three months' period due to the lack of property or in case the Debtor's inability to cover all his debts becomes evident in the course of execution or
- 4) the Debtor has not paid his debt within ten days after the term and the creditor has notified him of his intention to file a Bankruptcy Declaration and the Debtor has failed to pay his debt within ten days after the notification or
- 5) the Debtor announces the Creditor, a Court of Law or the general public that he is unable or unwilling to pay his debt.

9.2 The Court can rule a bankruptcy in cases regulated by § 9.1, Subsection 1-3 and 5 regardless of the term of executing the claim passing or not.

9.3 The Creditor submitting the Bankruptcy Declaration shall present evidence as to the amount, nature, grounds and terms of payment of the debt as well as arguments about the Debtor's inability to meet the claim.

9.4 Evidence regulated in § 9.1 Subsection 3 shall not be presented in case

the Creditor's Declaration is based upon a judgement by a Court of Law, Arbitration or Arbitration Court concerning the claim presented in the Declaration.

10 The Estate Administrator's Obligation to File a Bankruptcy Declaration

The administrator of a deceased person's estate shall be bound to file in a Bankruptcy Declaration in case the deceased Debtor's estate should prove inadequate to meet all his debts.

11 Limitations to Bankruptcy

11.1 Bankruptcy cannot be announced in case the Creditor's claim is guaranteed by a pledge.

11.2 In case the Creditors claim is not fully covered by a pledge bankruptcy can be announced as to the part of the claim not covered by the pledge.

11.3 The Law can apply the meaning of Bankruptcy Limitations as stipulated in this § to other guarantees of the claim.

12 Preparation of a Bankruptcy Case

12.1 After the beginning of Bankruptcy Proceedings the Court shall adjudge the determination and evaluation of the Debtor's real estate and personal property, reviewal of his debts and sets a date for the reviewal of the Bankruptcy Declaration.

12.2 The Court shall have the right for information and explanation about the economic standing of the Debtor from banks and other institutions.

12.3 The Court shall have the right to demand the Debtor's signature as to the interdiction to leave his place of residence, make a notice of interdiction in the Property Registrar, sequester property and apply other means to guarantee the suit.

12.4 The interdiction to leave the place of residence can be applied to the owner of a indebted legal person, members of the liquidation committee, board members, members of the administrative council, managing director, and (head) accountant even in case they have resigned their position up to one year before the beginning of Bankruptcy Proceedings.

12.5 The Court has the right to announce the date and location of looking through the Bankruptcy Declaration in writing press.

12.6 The Court shall notify the owner of the indebted legal person of the submission of a Bankruptcy Declaration in case the Declaration had been filed in by another person.

12.7 The Court shall appoint a Temporary Bankruptcy Administrator (hereinafter: Temporary Administrator) to carry out the tasks resulting from this Article and based on § 29 of this Law.

13 Summoning Involved Parties

The Court shall summon the Debtor and the Creditor who had filed the Bankruptcy Declaration to the Court session or Court hearing where the aforementioned Declaration shall be looked through. The Court shall have the right to summon other Creditors, the Temporary Administrator, witnesses, and expert witnesses as well as other persons at its discretion.

14 Revision of the Bankruptcy Declaration

14.1 The Court shall look through the Debtor's Bankruptcy Declaration immediately or in case serious reasons for delay should arise - within 20 days.

14.2 The Court shall look through the Creditor's Bankruptcy Declaration within 20 days or within two months in case serious reasons for delay should arise.

14.3 After looking through of the Bankruptcy Declaration the Court shall pass a Judgement announcing Bankruptcy (Bankruptcy Judgement) or failing to satisfy the Declaration or ruling the ending of Bankruptcy Proceedings (§ 15) by decree.

14.4 The Court shall fail to satisfy the Declaration of Bankruptcy in case the Debtor's economic standing enables him to meet the claim.

14.5 It is possible to appeal about the passed judgement according to the Law on Civil Suit.

15 Cancellation of Bankruptcy Proceedings

15.1 The Court shall close Bankruptcy Proceedings without announcing a Bankruptcy due to cancellation in the following cases:

- 1) The Debtor's debts are paid by the Debtor or a third person or guarantees are supplied or standing bail to meet the claim is approved by the Court after the Bankruptcy Declaration has been filed or
- 2) The Court finds that the Debtor's property is insufficient to cover the fee for Bankruptcy Proceedings and the possibility for obtaining means of payment is lacking (§ 42).

15.2 The Court shall announce the cancellation of Bankruptcy Proceedings according to § 15.1 Subsection 2 in writing press.

15.3 The Court shall not terminate Bankruptcy Proceedings according to § 15.1 Subsection 2 in case the Debtor, Creditor or a third person pays the appointed sum to the Court to cover Court fees for Bankruptcy Proceedings.

16 Bankruptcy Judgement

16.1 The Court shall announce a Bankruptcy if it has established the insolvency of the Debtor (§ 1.2). After the Debtor has testified as to his insolvency the Court can fail to announce Bankruptcy only on serious grounds.

16.2 The Bankruptcy Judgement shall determine the date of the first Creditors' Meeting (§ 27.1) and location and appoints the Bankruptcy Administrator (hereinafter: Administrator). Temporary Administrators or third persons can be appointed to this position.

16.3 The Court shall publish the Bankruptcy Judgement immediately in writing press and the Appendix to the "Riigi Teataja" including the name of the Court, date of passing the Judgement, information about the Debtor and the Administrator, terms of filing claims (§ 23) and the date and location of the first Creditors' Meeting.

16.4 The Bankruptcy judgement shall be carried out immediately with the exclusion of situations specifically stipulated by this Law.

16.5 The higher Court of Law that has disaffirmed or passed a court decision concerning a Bankruptcy shall announce its verdict in the manner stipulated in § 16.3 of this Law.

III CONSEQUENCES OF ANNOUNCING BANKRUPTCY

17 Effect of Announcing Bankruptcy

As a result of the Bankruptcy judgement :

- 1) the Debtor's property shall become Bankruptcy Estate (§ 41);
- 2) the right to administer the use of the Debtor's property shall pass to the Administrator operating under the supervision of Creditors and the Court;
- 3) the Debtor's rights shall be limited in the fashion regulated by this Law;
- 4) other effects regulated by this Law shall follow.

18 Transactions with the Bankruptcy Estate

18.1 The Debtor shall lose his right to conclude independent transactions with the Bankruptcy Estate. The abovementioned transactions shall be carried out by the Administrator or the Debtor with the Administrator's consent.

18.2 Persons in possession of the Debtor's property shall be prohibited to carry out transactions with the aforementioned property from the date that they learned or were expected to learn of the Declaration of Bankruptcy but not its date of publication in writing press (§ 16.3).

18.3 All transactions concluded breaching the stipulations of this Law shall be declared null and void.

19 Notification in Registrars and Sequestering Property

19.1 The Court shall notify the official keepers of Registrars of the declaration of Bankruptcy to enable them to make a note of interdiction in the Registrars. In case such a note has been made previously it shall remain in force.

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19.2 The Debtor's property concerning which an interdiction note is not made in the registrar shall be sequestered immediately after declaring Bankruptcy. In case the property had been sequestered earlier it shall remain in force (§ 12).

19.3 The Court shall notify the keepers of the Enterprise Registrar to enable them to make a note of Bankruptcy in the Registrar.

20 Claims in Connection with Bankruptcy Proceedings

20.1 In case the unfinished Court Proceedings should contain the Debtor's suit against a third person's property that can be included in the Bankruptcy Estate, the Administrator shall have the right to replace the Debtor in Court. If the Administrator should be informed about the Suit and unwilling to replace the Debtor in court he shall have no right to file a Suit on the same grounds.

20.2 If a property suit against the Debtor should be under legal proceedings it has to be added to Bankruptcy Proceedings.

20.3 The Debtor is obliged to inform the Court and the Administrator of cases under proceeding as regulated in § 20.1.

20.4 After Bankruptcy has been declared all property claims against the debtor can be filed only within Bankruptcy Proceedings.

21 Payment Dates and Interest

21.1 The payment dates of all the Debtor's debts are considered to end at the day of Declaration of Bankruptcy unless specifically regulated otherways in this Law. Calculation of interest and fines for delay from the Debtor's debts shall be finished.

21.2 In case the claim should depend on certain conditions that can arise or not regardless of the Parties, the claim can be filed in and shall be taken into consideration if there is reason to believe that the conditions shall arise.

22 Fulfilling the Debtor's Obligations and Rights

22.1 The Administrator has the right to fulfill the debtor's obligations to another person (entitled person) or desist from doing so unless the Law should regulate otherways.

22.2 The Court shall fix a date for the Administrator to inform of his intentions to fulfill the Debtor's obligations at the entitled person's request. The term for payment shall not be longer than twenty days calculated from the date the person had approached the Court.

22.3 Persons with obligations to Debtor shall continue fulfilling them after the Declaration of Bankruptcy unless the law should regulate otherways. The Administrator shall have the right to demand fulfilment of these obligations.

22.4 In case the Debtor is a lessor, the purchaser of leased property shall have no right to terminate the lease. The Administrator shall have the right to terminate the lease if the lease determines Bankruptcy as a reason for its termination.

22.5 In case the Debtor is a lessee, the lessor shall have the right to demand the termination of the lease or guarantees as to observation of the agreement during Bankruptcy Proceedings from the Administrator.

22.6 The lessor's Bankruptcy shall not provide a basis for terminating a living space lease.

23 Notification of Claims and Obligations

23.1 The Creditor shall be obliged to inform the Administrator of all his claims against the Debtor notwithstanding the grounds and terms of the claim within two months calculated from the day of publication of the announcement in writing press.

23.2 All persons shall be obliged to inform the Administrator of property belonging to the Debtor in their possession for any reason within the period stipulated in § 23.1.

23.3 Persons whose claims have been satisfied in the manner stipulated in §§ 8 and 85 shall be freed of the obligation to notify as determined in § 23.1.

IV BODIES OF BANKRUPTCY PROCEEDINGS

24 Competency of the Court in Bankruptcy Proceedings

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- 2.1 The Court in Bankruptcy Proceedings shall:
- 1) announce bankruptcy or fail to satisfy the Bankruptcy Declaration;
 - 2) appoint the Administrator;
 - 3) establish compromise;
 - 4) settle disputes about defending the claims;
 - 5) review claims for reclaiming property;
 - 6) settle complaints as to the Creditor's General Meeting's decisions;
 - 7) approve the proposal for distribution of property;
 - 8) end Bankruptcy Proceedings;
 - 9) carry out other tasks determined by the Law.

25 Competency of the Creditor's General Meeting

The Creditors at the Creditors' General Meeting shall:

- 1) nominate the administrator and elect the Bankruptcy Committee;
- 2) decide the Debtor's (legal person's) continuation or termination of operation
- 3) decide about compromise;
- 4) decide about the sale of Bankruptcy Estate;
- 5) defend the claims;
- 6) review complaints against the Administrator's activities;
- 7) settle other questions within the competence of the Creditors' General Meeting as determined by Law.

26 Organization of the Creditors' General Meeting

26.1 The Creditors' General Meeting shall be summoned under circumstances regulated by the Law by the Administrator at a date fixed by the Court or by the Administrator

26.2 The Administrator shall be obliged to summon the Creditors' General Meeting within two weeks at the demand of Creditor whose claims amount at least to 20 % of the grand total of all the claims.

26.3 The Creditors' General Meeting shall be attended by all the Creditors in person or by proxy, the Judge, the Administrator, and the Debtor and persons summoned by the court or the Administrator.

26.4 The number of the Creditor's votes at the Creditors' General Meeting shall be proportional to the amount of their claim. Decisions shall be passed by a simple majority of votes of all the participating Creditors.

26.5 The Creditors General Meeting shall be competent to pass decisions independent of the number of votes represented at the Meeting on condition that the Creditors had been informed of the time and place of the Meeting in due time.

26.6 If the Creditors have not reached an agreement as to the number of votes belonging to them before the defending of claims (§ 72) starts, the Administrator or the Creditors shall have the right to turn to the Court for a decision within 10 days calculated from the Creditors' General Meeting. The Court shall settle the dispute in five days along with the question of the General Meeting's disputed Decision's validity.

27 The First Creditors' General Meeting

27.1 The first Creditors' General Meeting shall take place no earlier than 15 and no later than one month after declaring Bankruptcy.

27.2 The Creditors shall elect a Bankruptcy Committee, nominate an Administrator, and decide the continuation or cessation of the Debtor's (legal person's) operation at the first Creditors' General Meeting.

28 The Bankruptcy Committee

28.1 The Bankruptcy Committee shall represent the Creditors' interests and supervise the Administrator's activities in Bankruptcy Proceedings.

28.2 The Bankruptcy Committee shall have the right to demand that the Administrator report about carrying out his duties, supply information about Bankruptcy Proceedings and audit the Administrator's economic activities in governing the Bankruptcy Estate.

28.3 Non - Creditors can be elected to the Bankruptcy Committee. The members of the Bankruptcy Committee shall elect a Head of the Bankruptcy Committee from among themselves. Persons enumerated in § 49 as well as the judge and Administrator of the Bankruptcy Proceedings shall not belong to the Bankruptcy Committee.

28.4 The Bankruptcy Committee shall not be formed if there are less than five Creditors. The General Creditors' Meeting shall operate in its position.

28.5 The Bankruptcy Committee shall be competent in case more than one half of its members are present. The Bankruptcy Committee shall pass decisions by a simple majority of votes, the Head shall have a casting vote in case the votes go even.

29 The Administrator

29.1 The Administrator's knowledge and experience has to meet all the requirements of his position. He shall have the trust of the Court and the Creditors. A person who has previously given prior written consent can be appointed Administrator.

29.2 The Administrator cannot be a Court employee or any of the persons enumerated in § 49.

29.3 There can be more than one Administrators in Bankruptcy Proceedings. The court shall fix the number of Administrators according to the nature and amount of the Bankruptcy Estate and distribute tasks between them. A single person cannot act as Bankruptcy administrator in more than three Bankruptcy Proceedings simultaneously.

30 Approval of the Administrator

30.1 The Administrator appointed by the Bankruptcy judgement shall be approved at the Creditors' General Meeting.

30.2 The Creditors shall elect a new Administrator in case the Administrator appointed by the Bankruptcy judgement shall not be approved.

30.3 In case the Creditors' General Meeting shall appoint a person who has not been appointed by the Bankruptcy judgement, the Court shall decide the approval of his candidacy within 10 days or nominate a new Administrator.

30.4 The Court shall fail to approve the Administrator appointed by the Creditors in case he does not meet the standards set in § 29 or the person's candidacy has not been approved by the Creditors' General Meeting according to § 30.2.

31 Main Duties of the Administrator

31.1 The Administrator shall defend the interests of all the Creditors as well

as the Debtor and assure the rapid progress of Bankruptcy Proceedings.

31.2 The Administrator shall govern the Bankruptcy Estate during Bankruptcy Proceedings, organize the formation of the Bankruptcy Estate and manage the meeting of Creditors' claims from it.

31.3 The Administrator shall organize the continuation (including reorganization and restructuring) and liquidation of the Debtor's operation in case the Debtor is a legal person.

31.4 The Administrator shall appear as a defendant or a plaintiff as well as a representative or party to agreement in the name of the Debtor or Creditor.

31.5 The Administrator shall be obliged to provide information to the Creditor, the Debtor and the Court under circumstances defined in the Law.

32 Assistant to the Administrator

32.1 The Court can appoint an Assistant to the Administrator at its own discretion or the Administrator's request to carry out tasks given by the Administrator.

32.2 Persons who cannot be appointed to be Administrators according to § 29.2 shall not be appointed to be Assistants to Administrators.

33 Dismissing an Administrator

33.1 The Administrator shall be dismissed at his own request. The Administrator shall inform the Court of his wish one month ahead and submit a report as to his activities.

33.2 The Court shall dismiss the Administrator at his own request, the Bankruptcy Committee's or the Debtor's request as well as the decision of the Creditors' General Meeting in case the Administrator should be incapable to carry out his duties.

33.3 A new Administrator shall be named in case of the Administrator's dismissal according to § 30. The court shall make a decision as to the necessity to appoint a new Administrator instead of the dismissed one in case there should be more than one Administrators.

34 Appealing about the Administrator's Activities and Decisions of the Creditors' General Meeting.

34.1 The Creditor and Debtor can appeal about the Administrator's activities to the Creditors' General Meeting.

34.2 The decision of the Creditors' General Meeting failing to satisfy the complaint about the Administrator's activities can be appealed to a higher Court within 10 days.

V THE DEBTOR'S OBLIGATIONS

35 Interdiction of Entrepreneurship

The Debtor (a private person) shall not be allowed to engage in entrepreneurship during Bankruptcy Proceedings without the consent of the Court.

36 Obligation to Supply Information and Participate in the Bankruptcy Proceedings

36.1 The Debtor shall be obliged to supply information concerning his property and debts necessary in Bankruptcy Proceedings to the Administrator and the Bankruptcy Committee.

36.2 The Debtor shall have to be present at the court sessions, General Meeting of the Creditors and the Bankruptcy committee, the putting under writ of attachment of property or other procedures of Bankruptcy proceedings in person in case the Court or the Administrator should oblige him to do so.

36.3 The Court or the Administrator shall decide who of the persons enumerated in § 12.4 shall take part in procedures determined in § 36.2 if the Debtor is a legal person.

37 The Debtor's Oath

37.1 The Debtor shall make all necessary amendments in the list of debts and the Bankruptcy Estate (§ 56) and take an oath in court as to the accuracy of the list.

37.2 The oath shall be given before the first Creditors' General Meeting.

37.3 The oath shall be taken by Debtors at least 15 years of age. The Debtors' guardian shall take an oath in the place of Debtors between 15 and 18 years of age if the Court should rule so.

37.4 The oath shall be taken orally. The person taking the oath shall sign the text of the oath.

38 The Debtor's Obligation to be Present

38.1 The Debtor shall not be allowed to leave the country without the Court's permission.

38.2 In case there should be reason to believe that the Debtor refrains from carrying out the obligations arising from this Law the Court can demand at its own discretion or the Administrator's suggestion that the Debtor sign an obligation not to leave his place of residence .

38.3 The interdiction determined in § 38.2 shall be in force up to the end of Bankruptcy Proceedings unless the Court should rule otherways.

38.4 In case the interdiction determined in § 38.2 had been applied before the Declaration of Bankruptcy (§ 12) the Court shall decide the termination or validity of the interdiction upon taking the decision about Bankruptcy.

39 Summoning under Compulsion and Placing under Arrest

The Court can apply compulsory summoning in case the Debtor should fail to fulfill his obligations according to §§ 36.2, 37 or 38 . The Debtor can be placed under arrest for up to three full days in connection with summoning the Debtor under compulsion.

40 Obligations of Amenable Persons

In case the Debtor is a legal person the court shall decide independently or following the Administrator's suggestion to whom of the persons enumerated in § 12.4 shall the contents of §§ 37, 38 and 39 apply.

VI FORMATION OF THE BANKRUPTCY ESTATE

41 The Bankruptcy Estate

41.1 The Debtor's estate shall become the Bankruptcy Estate according to the Bankruptcy Judgment to be used as a special property for meeting the Creditors' claims.

41.2 The Bankruptcy Estate shall be interpreted as the property in the Debtor's ownership at the time of declaring Bankruptcy as well as reclaimed or recovered property or property to be added to the Bankruptcy Estate in other manner during Bankruptcy Proceedings.

41.3 The Debtor's exempt property shall not be considered to be a part of the Bankruptcy Estate.

42 The Concept and Terms of Recovering

42.1 Upon the process of recovering the Administrator shall demand the return of property that has left the Debtor's estate or possession and add it to the Bankruptcy Estate.

42.2 The Court shall adjudge all the transactions that caused the property to leave the Debtor's estate or possession to be null and void according to §§ 43 up to 50.

42.3 The suit of recovering can be filed within a year after the Declaration of Bankruptcy

43 Declaring Transactions to be Null and Void

43.1 The Court shall declare the Debtor's transaction to be null and void in case :

- 1) the transaction had been concluded within a year before the start of the Bankruptcy Proceedings and the Debtor wilfully damaged the Creditors' interests with it or
- 2) the transaction had been concluded within three years before the start of Bankruptcy Proceedings if the Debtor had caused his insolvency with a criminal offence and the other party to the agreement was or was supposed to be aware of the fact or
- 3) the transaction had been concluded within five years before the

start of Bankruptcy Proceedings if the Debtor had wilfully damaged the Creditors' interests and the other party to the agreement being his retinue was or was supposed to be aware of the fact.

43.2 In case the transaction (pressed for to be declared null and void) had been concluded within 10 days before the beginning of Bankruptcy proceedings it shall be assumed that the Debtor has wilfully damaged the Creditors' interests.

44 Declaring Donation Agreements to be Null and Void

44.1 The Court shall declare a Donation Agreement to be null and void independent of the Debtor's and Donee's wish to harm the Creditors in case:

- 1) the Agreement had been concluded one month before the beginning of Bankruptcy Proceedings or
- 2) the Agreement had been concluded before the term determined in § 44.1 but within the last year or in cases the Donee belongs to the Debtor's retinue - within the five last years before the beginning of Bankruptcy Proceedings if the Donee or the Debtor cannot prove that after the donation sufficient claimable funds remained to cover the debts

44.2 The Court can nullify a purchase, exchange or other deal according to § 44.1 in case the inequality of the parties' obligations show that the deal had been totally or partially a donation by nature.

44.3 Subsidies and ordinary presents suitable to the economic standing of the Debtor shall not be reclaimed.

45 Reclaiming of Paid Debts

The Court can reclaim a paid debt if the payment has been made

- 1) within three months before the beginning of Bankruptcy Proceedings in case the payment had been made with unusual means or ahead of schedule or in an amount that had substantially worsened the Debtor's economic standing and cannot be considered to be a regular payment of debt or
- 2) within two years before the beginning of Bankruptcy Proceedings if made to the Debtor's retinue and the Debtor or the retinue are

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unable to prove to the Debtor's solvency at the time of payment or the fact that the payment had not caused the Debtor's insolvency.

46 Reclaiming of Wages or Fees

The Court shall have the right to reclaim wages or fees that the Debtor had paid without proper grounds

- 1) within the last six months before the beginning of Bankruptcy Proceedings or
- 2) before the term mentioned in § 46.1) but still within the last year or in within the last two years case the person paid belong to the Debtor's retinue if the recipient of the payment or the Debtor are unable to prove that after payment sufficient claimable funds had remained to cover the debts .

47 Declaring the distribution of Property to be Null and Void

The Court shall declare a respective part of a distribution of property between the Debtor's spouse or other collective owner to be null and void in case the Debtor had given up a substantial share in the collective estate and the distribution of property had taken place within the three last years before the beginning of Bankruptcy Proceedings and the collective owners or the Debtor shall be unable to prove that after the distribution sufficient claimable funds remained in the Debtor's estate to cover the debts.

48 Declaring a Pledge Agreement to be Null and Void

The Court shall declare a pledge agreement to be null and void in case the agreement had not been concluded immediately after the arising of the debt and the pledge had been taken

- 1) within the last three months before the beginning of Bankruptcy Proceedings or
- 2) to the Debtor's retinue before the term mentioned in § 48.1) but still within the two last years before the beginning of Bankruptcy Proceedings if the Debtor or his retinue shall be unable to prove that the Debtor had not been insolvent or did not become insolvent as a result of the pledge.

49 The Debtor's Retinue

49.1 The retinue of a Debtor as a private person are his spouse, relatives in direct ascending and descending lines, sister, brother and their relatives of descending lines, relations through marriage in direct ascending and descending lines, brothers and sisters of the spouse as well as the actual spouse.

49.2 The retinue of the Debtor as a legal person shall be

- 1) the owner of the legal person (including a partner or a shareholder) and its affiliates as well as any person with a substantial common economic interest with the Debtor that can be interpreted to be equal to a partner's interest;
- 2) other persons enumerated in § 12.4;
- 3) retinue of the persons enumerated in the Subsections 1 and 2 of § 49.2 according to § 49.1.

49.3 In case of dealing with the retinue of the Debtor it shall be presumed that the person belonging to the retinue had been aware of the fact that the Debtor had wilfully harmed the Creditors' interests with a transaction.

50 Order of Reclamation

The Administrator shall have the right to demand reclamation by

- 1) filing a claim to Court (§ 42.3) or
- 2) protesting a claim submitted at the defence of claims or application for a prerogative or
- 3) protesting a claim submitted during Bankruptcy Proceedings.

51 Separation of Property

51.1 In case the return of property is demanded from a third person who had acquired it from the Debtor, the third person shall have the right to demand the return of the abovementioned property or its equivalent in money from the Debtor if it has not been established that the third person had been aware or was supposed to be aware that the transaction had harmed the Creditors' interests. The returned property shall be severed from the Bankruptcy Estate

51.2 In case the the property mentioned in § 51.1 should exist the Court can

replace the obligation to return the property with the obligation to compensate its value.

51.3 The third person can file a claim for separation of property to the Administrator within a month after the date that the judgement became effective or the date that the third person handed over the property to be reclaimed without a Court judgement.

52 Reclaiming the Debtor's Property and distribution of Common Property

52.1 The Administrator shall reclaim the Debtor's property in possession of third persons unless other ways determined by Law. In case the property should be in the common ownership of the Debtor and other persons the Debtor shall reclaim his share of the common property.

52.2 The Administrator shall file a claim for the reclamation of property mentioned in § 52.1 or the distribution of common property within two months calculated from the publishing of the Bankruptcy Declaration in writing press.

52.3 The Debtor shall have the right to participate as a third person. In case the Administrator has failed to submit an application during the time determined in § 52.2 the Debtor shall have the right to do so independently informing the Administrator, who in that case shall have the right to participate as a third person. If the Administrator shall not take this opportunity he shall lose the right to protest the decision of dividing the common property.

53 Exclusion of Property from the Bankruptcy Estate

53.1 Property belonging to other persons in the Debtor's possession shall be returned to the owner in case of exclusion of property from the Bankruptcy Estate. The Administrator shall guarantee the safekeeping of the property until its return.

53.2 The exclusion of property shall be carried out at the owner's request. A suit can be filed to Court in case of the Administrator's refusal. The request for exclusion of property shall be submitted to the Administrator within two months after the publication of the Bankruptcy Declaration. The suit shall be filed to Court within one month after the Administrator's refusal to fulfill the

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request or during one month if the Administrator has failed to respond to it.

53.3 In case the Administrator shall have sold the property determined in Section 1 of this §, the person entitled to the property has the right to a respective amount of money from the Bankruptcy Estate or demand the return of the property from its purchaser in case there is sufficient reason to believe that the purchaser had been aware that the Debtor had not been the rightful owner of the property in question.

53.4 In case the Debtor shall have sold the property determined in § 53.1 before the declaration of his insolvency, the person entitled to demand the exclusion of property has the right, in addition to the rights determined in the previous Section, to

- 1) request the transfer of money to himself unless the purchaser of the property has not yet made the payment or
- 2) request compensation from the Bankruptcy Estate in case the payment had been made after the Declaration of Bankruptcy or
- 3) demand to participate in Bankruptcy Proceedings on general grounds if the payment had been made to the Debtor before the Declaration of Bankruptcy

53.5 If the person entitled to demand the exclusion of property shall demand the return of property from the purchaser in cases determined in § 53.3 he shall file a claim within one month after he learned or was supposed to learn of the expropriation.

54 Handing Over Sequestered Property

54.1 Property sequestered up to the publication date of the Bankruptcy Declaration that has not yet been handed over as well as property sequestered upon publication of the Bankruptcy Declaration shall be handed over to the Administrator and considered to be a part of the Bankruptcy Estate.

54.2 The principles determined in the previous Section shall not hold true in case a judgement has been passed as to the claim warranted by a pledge.

VII ADMINISTRATION OF THE BANKRUPTCY ESTATE

55 Concept of Administration of the Bankruptcy Estate

55.1 The administration of the Bankruptcy Estate shall lie in the Administrator's activities protecting the Bankruptcy Estate and managing the Debtor's economic activities.

55.2 The administration of a Debtor as a legal person shall pass to the Administrator by the Bankruptcy Judgement.

55.3 The Administrator, while managing the Debtor's economic affairs shall have the right to conclude agreements and borrow only with the consent of the Creditors' General Meeting.

56 Registrar of Property and Debts

56.1 After the Declaration of Bankruptcy the Administrator shall compile a list of the Debtor's property and debts marking the value of property and debts according to their nature. The Registrar shall contain the names and addresses of all the Creditors and places of location or residence

56.2 The Administrator shall hand in the Registrar to the Court as soon as possible, at least 10 days prior to the Creditors' General Meeting.

56.3 A new Registrar shall not be compiled in case the Debtor has handed the Court a Registrar and the Administrator certifies its accuracy

57 Reorganization and Liquidation of a Debtor as a Legal Person

57.1 After the Declaration of Bankruptcy the Administrator shall compile a plan of continuation of the Debtor's operation (reorganization or making structural changes) or its liquidation.

57.2 The Administrator shall submit the aforementioned plan to the first Creditors' General Meeting for approval. The Creditors' General Meeting shall approve or make a different decision as to the continuation or cessation of the Debtor's operation.

57.3 The Administrator shall have no right to start liquidation proceedings of the legal person prior to the Creditors' General Meeting decision or

continue the liquidation process that started before the beginning of Bankruptcy Proceedings. The Administrator shall have the right to start reorganizing or making structural changes immediately after the Declaration of Bankruptcy.

57.4 The legal person shall be liquidated at least by the end of Bankruptcy Proceedings. The legal person shall not be liquidated in case Bankruptcy Proceedings should be terminated due to a compromise or according to § 15.1. Subsection 1 or the Debtor's payment of his debts or his supplying guarantees after the Declaration of Bankruptcy or in case sufficient means should remain after fulfilling all claims to continue operation.

57.5 The legal person shall be liquidated according to the Court enactment determined in § 15.1 Subsection 1. The liquidation process shall be concluded at least within three months after the enactment came to force.

57.6 The legal person shall be liquidated under the Administrator's supervision according to the manner determined in norm documents.

58 Termination of Labor Contracts and Defence of the Employees' Rights

58.1 In the event of the employer's Bankruptcy the Administrator shall continue to observe the labor contract or terminate it in a manner determined by Law.

58.2 The State shall compensate the employees for their wages that were not received before the Declaration of Bankruptcy but within an amount not exceeding the average wages of two consecutive months.

58.3 The payer of compensation shall act as a Creditor in Bankruptcy Proceedings in case the state shall compensate the employees upon the termination of the Labour contract or according to § 58.1.

59 The Administrator's Report Concerning the Bankruptcy Estate

59.1 The Administrator shall submit a Report concerning the Bankruptcy Estate containing

- 1) the reason of insolvency and the time of its occurrence;
- 2) information about the possibilities and terms of reclaiming property
- 3) the Debtor's claims against the Creditors;

- 4) the balance sheet of a legal person, information about the continuation of legal operation.
- 5) information about reporting a criminal offence in connection of the Bankruptcy;
- 6) other matters of relevancy concerning Bankruptcy Proceedings.

59.2 The Administrator shall submit the Report as soon as possible but no later than within three months after the Declaration of Bankruptcy to the Court, the Bankruptcy Committee and to each Creditor who had expressed a wish to acquaint himself with its contents. The Court can prolong the term of submission of the Report on serious grounds. The last annual balance sheet shall be added to the Report in case the Debtor is under accounting obligation

60 Criminal Offences Concerning Bankruptcy and Reporting Them

60.1 Bankruptcy offences shall be interpreted as actions determined in §§ 148.2 and 148.3 of the Penal Code.

60.1 The Administrator shall be obliged to inform the Public Prosecutor of his doubts or evidence about a criminal offence concerning Bankruptcy or any other economic crime.

61 Holding Money

61.1 The funds received during the administration of the Bankruptcy Estate shall be transferred to a special bank account. An appropriate amount of money for the payment of current expenses can be left undeposited.

62 The Administrator's Accounting Obligation

The Administrator shall hold account of income to and expenses from the Bankruptcy Estate.

63 Payment of Allowance

The Court shall adjudge a necessary allowance to be paid to the Debtor and his dependants during two months at the Debtor's request in case the Debtor should be left without livelihood during Bankruptcy Proceedings. The Court may prolong the period of payment on serious grounds.

VIII CLAIMS IN BANKRUPTCY PROCEEDINGS

64 Ground for Claims

64.1 The Creditor can submit a claim during Bankruptcy Proceedings that has arisen before the Declaration of Bankruptcy according to § 21.

64.2 Claims arising after the Declaration of Bankruptcy resulting from the Administrator's transactions with the Bankruptcy Estate shall not have to be submitted within the period stipulated in § 23 and defended according to the procedure stipulated in § 72. Such claims shall be satisfied according to § 85.

65 Claims in the Bankruptcy of a Jointly Responsible Debtor

65.1 In case of the Debtor sharing a joint responsibility to the Creditor with another person, the Creditor shall have the right to submit an integral or a partial claim against the Debtor subtracting the part already paid by the jointly responsible person.

66 Claims in the Bankruptcy of a General Partnership and its Partners

66.1 In the event of Bankruptcy of a general partnership the Creditors shall be the Creditors of the general partnership as a whole and not the partners' Creditors. In case the general partnership's property should prove to be insufficient for covering the debts the Creditors shall have the right to submit separate claims against the partners. In case the partners should be unable to pay, a claim requesting the Declaration of the partners Bankruptcy can be submitted in addition to the general partnership's Bankruptcy Declaration.

66.2 Upon declaration of a general partner's Bankruptcy his share in the Partnership's property can be claimed.

66.3 The principles stipulated in Sections 1 and 2 of this § shall hold true to limited partnerships and its partners as well as other enterprises in which the partners are fully liable for the enterprise's obligations.

67 Claims after Reaching Compromise

In case the Debtor had reached compromise with the Creditors (Chapter XIII) and had been declared insolvent again before carrying out the Compromise, the Creditor, whose claim was diminished by the compromise

shall have the right to claim within the primary amount, subtracting the amount already covered by the Debtor.

68 Equalization of Claims

68.1 The Creditor shall have the right to equalize his claims against the Debtor with the Debtor's claims against himself before the Declaration of Bankruptcy in case equalization should not be prohibited by Law.

68.2 In case the claim should depend on a condition the Creditor shall fulfill the condition. The sum calculated to the Creditor during the compilation of a proposal for distribution shall be deposited if there should be reason to believe that the condition shall be fulfilled later on.

68.3 The equalization of claims the term of which has not ended or the postponing condition has not been fulfilled yet can be equalized in Bankruptcy Proceedings.

68.2 A claim against the Debtor obtained by assignment within three months before the beginning of Bankruptcy Proceedings shall not be equalized with the Debtor's claims arisen before the assignment of the claim. This principle shall be followed in case the claim had been assigned earlier but still within the last three years before the beginning of Bankruptcy Proceedings if the Debtor had been insolvent at that time.

69 Submitting Claims

69.1 An application for a claim shall be submitted to the Administrator in writing at the date stipulated in § 23. The application for a claim shall contain the contents, grounds and size of the claim as well as documented evidence. A separate note shall have to be made and sufficient reason to be given in case a prerogative for satisfaction of the claim should be applied for.

69.2 The application for a claim shall be signed by the Creditor or his proxy.

69.3 The Administrator shall give no less than 10 days to mend all the shortcomings in case the application had not been made out properly, documents were missing or the copies were not properly proven. The submission date of the aforementioned application shall be the date of primary application. In case the shortcomings shall not be mended the Creditors' General meeting shall have the right to consider the application

not to be handed in.

69.4 The General Meeting shall have the right to consider the reason for failing to submit the application to be sufficient and restore the date of submitting the claim.

69.5 In case the claim had been submitted after the date stipulated in § 23 but before the Meeting for Defending the Claims and its date of submission had not been restored, the claim shall be taken into consideration but shall be satisfied only after the claims that had been submitted in proper time have been satisfied.

69.6 The resolution of the Creditor's General Meeting ruling the application of a claim not to be submitted or failing to restore the date of submission can be appealed to Court.

70 The Meeting for Defending the Claims

70.1 The Court shall decide the necessity to defend the claims at the Creditors' General Meeting (The Meeting for Defending the Claims) at the Administrator's suggestion in case it becomes evident that the claims cannot be satisfied from the Bankruptcy Estate without prerogative. The decision about the need to defend the claims shall be taken within 15 days after the passing of the date stipulated in § 23.

70.2 The Administrator shall fix a time and place for defending the claims in case a decision about the defence of claims should be passed. The Meeting shall be held not earlier than one month and no later than two months after the passing of the date stipulated in § 23. The Court can prolong the date on serious grounds.

70.3 The Administrator shall announce the Meeting for Defending the Claims in writing press at least 15 days ahead including the location where the claims and objections can be studied.

70.4 The Debtor shall be obliged to take part in the Meeting for Defending the Claims. The Meeting shall decide the possibility of defending the claims in the event of the Debtor's absence. The absence of the Creditor submitting a claim shall not prevent the looking through of his claim.

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71 Submitting Objections Befort the Meeting for Defending the Claims

71.1 The Administrator shall look through the submitted claims and hand in his objections in writing to the Creditors and Debtor for studying within seven days before the date of the Meeting for Defending the Claims.

71.2 The Creditor submitting a claim and the Debtor can hand in their written objections to the Administrator at the same time.

71.3 After the looking over of claims at the Meeting for Defending the Claims objections against this claim shall not be taken into account.

72 Defending the Claims

72.1 The claims shall be looked over at the Meeting for Defending the Claims in the order of their submission. The Meeting shall pass a decision as to the degree of their acknowledgement and satisfaction.

72.2 A note shall be made in the Minutes of the Meeting for Defending the Claims as to the looking over of each claim. A list of acknowledged claims shall be compiled. The degree of acknowledgement and satisfaction of each claim shall be marked in the list. The list shall be signed by the Head of the Bankruptcy Committee and all the present Creditors.

72.3 The claim shall be considered acknowledged in case there should be no objections from the Administrator or the Creditors as well as in the event of Compromise between the Creditor and the objector and the acknowledgement of these claims shall be approved by the Meeting.

72.4 A claim based on an executed judgement of a Court or an Arbitration Court shall be considered to be acknowledged without defence by the Meeting for Defending the Claims

72.5 Several Meetings for Defending the Claims can be carried out if necessary, the last Meeting taking place within 20 days after the first Meeting

72.6 The decision about acknowledgement shall be final and cannot be appealed. In case it shall be proven that the acknowledgement of the claim had been made basing on false evidence, the Meeting for Defending the Claims can look through the matter within the period stipulated in § 72.5.

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After the end of the term the Court shall decide the acknowledgement of the claim at the Administrator's, Creditor's or the Debtor's request.

73 The Absence of Legal Basis for a Prerogative Claim

A prerogative to the distribution of the Bankruptcy Estate shall not be taken into consideration even if no objections had been filed to it and the Meeting for Defending the Claims had acknowledged it in case it should become evident that the legal basis for the prerogative of a claim had been absent.

74 Protests Concerning the Acknowledgement of Claims

74.1 In case the claim had not been acknowledged at the Meeting for Defending the Claims the Court shall decide the matter at the Creditor's request as a Proceeding of Claims.

74.2 The solving of a protest can be postponed in case a proposal for Compromise has been handed in and the reaching of Compromise has been decided.

74.3 The Court judgement concerning the acknowledgement of the claim can be appealed within 10 days.

IX SALE OF THE BANKRUPTCY ESTATE

75 General Principles of Sale of Property

75.1 The sale of the property can be started after the first General Meeting of the Creditors (§ 27) in case this Law does not stipulate otherways.

75.2 The sale of the Bankruptcy Estate can not be started without the Debtor's consent in case the Debtor has appealed about the Declaration of Bankruptcy before the appeal has not been looked through.

75.3 The limitations determined in Sections 1 and 2 shall not be applied to the sale of perishable goods and property with rapidly declining value or the keeping of which is costly as well as to the sale other property within the extent necessary to cover the expenses of Bankruptcy Proceedings.

75.4 The property shall not be sold if the operation of a Debtor as a legal person shall be continued and the sale shall impede it.

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76 The Sale of Property in Case of Compromise

76.1 In case the Debtor had suggested Compromise the property shall not be sold before the decision about Compromise has been reached.

76.2 The contents of § 75.1 shall not be applied in case the Debtor's suggestion of Compromise corresponded to the sale of property or had been caused by circumstances determined in § 75.3.

77 The Sale of Property in Case of a Prerogative Claim

The property shall be sold at the pledger's demand on condition that his prerogative had not been protested.

78 Order of Sale of the Property

78.1 The Administrator shall auction the Bankruptcy Estate or sell it in another manner at his discretion to assure maximum profitability.

78.2 The Creditors' General Meeting shall have the right to give directions to the Administrator as to the organization of the sale in a possibly profitable manner.

78.3 The Creditor with a prerogative shall have the right to sell the property personally with the Administrator's consent. The Creditor shall give the Administrator an opportunity to purchase the pledge. The Creditor selling property shall submit a report to the Administrator as to the gains from the sale.

79 Organizing an Auction

79.1 The auctioning of the Bankruptcy Estate shall be carried out by the order of bidding as regulated by Law.

79.2 The Administrator shall inform the Creditors with a prerogative claim about the auction.

80 Sale of the Debtor's Claims

80.1 The Administrator shall have the right to sell the Debtor's claims similar to any other personal estate if the claims cannot be satisfied within Bankruptcy Proceedings.

§8.2 Declaration of Bankruptcy shall have no effect upon the dates or terms of the Debtor's claims.

X DISTRIBUTION OF THE BANKRUPTCY ESTATE

81 Proposal for Distribution and Administration Report

81.1 After the defence of the claims the Administrator shall compile a proposal for distribution including

- 1) a list of claims with the results of their defence;
- 2) the share distributed to each Creditor;
- 3) information about money cashed in from the sale of the Bankruptcy Estate and in other manner as well as property yet unsold and payable debts and property from other persons.

81.2 The Administrator's Administration Report shall be added to the Distribution Proposal including

- 1) the manner of receiving cash;
- 2) the purpose of the property not to be distributed (the remainder);
- 3) information about receive dproperty with a prerogative claim;
- 4) information about payments (§ 83.1);
- 5) report of the costs of Bankruptcy Proceedings.

81.3 The Administrator shall submit the Distribution Proposal together with the Administration Report to the Bankruptcy Committee and Court within 10 days after the last Meeting for Defending Claims.

81.4 The Administrator shall publish an announcement as to the time and location where the Distribution Proposal can be studied and arguments submitted to it. The period for submission of protests shall not be shorter than 10 days and longer than one month after the publication of the announcement.

81.5 The Court shall approve the Distribution Proposal within 10 days after the end of the term for submitting protests.

81.6 The Court shall not approve the Distribution Proposal and return it to the Administrator with a motivated enactment in case the proposal breaches

85 Payments in Connection with Bankruptcy Proceedings

85.1 Payments in Connection with Bankruptcy Proceedings shall be interpreted as

- 1) debts arising during Bankruptcy Proceedings as a result of the Administrator's activities, debts arising from transaction carried out by the Administrator on the Debtor's behalf as well as payments resulting from the Debtor's (legal person's) continuing operation;
- 2) costs of Bankruptcy Proceedings (§ 98).

85.2 in case the distributed property should not be sufficient to cover all the expenses stipulated in § 85.1 they shall be paid in the order determined in the same Section.

86 Order of Claim Satisfaction

86.1 Claims shall be satisfied according to the determined distributions in the following groups:

- 1) prerogative claims (§ 84);
- 2) wages and other similar income (pension, fee, fee for legal advice), alimony, compensation for damage resulting from injury or other damage to health as well as the event of the supporter's demise;
- 3) taxes and social payments;
- 4) all other acknowledged claims.

86.2 The claims of a next group shall be satisfied after the satisfaction of the claims of the previous group.

86.3 The claims shall be satisfied in proportion of the size of the claims in case the property should not be sufficient to satisfy all the claims within one group.

87 Satisfaction of Claims Submitted Behind of Schedule

Defended claims submitted behind of schedule (§ 69.5) shall be satisfied from the property left over from the satisfaction of other claims.

the rights of the Creditors or the Debtor.

81.7 The court shall fail to take into account protests about the Distribution Proposal submitted after the end of the term.

82 The Concept of Distribution and its Application

82.1 Distribution shall be interpreted as an acknowledged claim or a part of it to be satisfied.

82.2 Distributions determined in the Distribution Proposal shall be paid in the order of satisfaction of the claims.

83 Payments from the Bankruptcy Estate

83.1 Before the distribution of the property according to the Distribution Decision the claims for separation (§ 51) and exclusion (§53) of property shall be satisfied and allowances to the Debtor and his dependants shall be paid (§ 63).

83.2 After satisfying the claims stipulated in the previous Section, payments resulting from Bankruptcy Proceedings shall be made and after that the Creditors' claims shall be satisfied according to the order of satisfaction of claims as stipulated in § 86.

84 Prerogative Claim

84.1 The prerogative claim shall be a claim guaranteed by a pledge.

84.2 The creditors with a claim guaranteed by a pledge shall have the right for satisfaction of the claim to the extent covered by the pledge even in case he had not submitted his claim in a proper manner.

84.3 The pledge right can remain in force upon the sale of property.

84.4 Other prerogative claims can be stipulated by Law in the meaning determined in this Article.

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88 Payment of Distributions

88.1 After the payment determined in § 83 and 85 the Administrator shall organize the payment of distributions to the Creditors (§86).

88.2 Protested claims shall be satisfied after the coming into force of the judgement acknowledging the claim.

88.3 Payments shall be made in groups proportional to the size of the distributions (§86) respective to the amount of money cashing in.

88.4 In case of a protest to Court the claim shall be considered to be equal to the claims determined in § 86.1.4) until the the judgement shall come into force.

88.5 Money paid to the Creditors for protested claims shall be deposited in the bank and become payable only after the judgement have come into force. In case the claims shall not be satisfied the money shall be paid in the course of follow-up distribution (§ 89).

89 Follow-up Distribution

Money additionally received after the approval of the distribution proposal shall be distributed according to § 83, 85 through 88 and 91, increasing the size of distributions if necessary.

90 Losing the Right for Distribution

90.1 The Creditor shall lose his right for distribution in case it had been impossible to make the payment to him at his own fault within two years

90.2 Money not paid due to reasons stipulated in § 90.1 shall be paid by follow-up distribution.

91 Property to be Returned to the Debtor

The property remaining after a full satisfaction of the claims shall be returned to the Debtor.

XI END OF BANKRUPTCY PROCEEDINGS

92 Grounds for Ending Bankruptcy Proceedings

Bankruptcy Proceedings shall end with

- 1) failing to satisfy the Declaration of Bankruptcy;
- 2) cancellation of Bankruptcy Proceedings;
- 3) termination of Bankruptcy Proceedings as stipulated in § 93;
- 4) approval of the Distribution Proposal;
- 5) full satisfaction of claims before the approval of the Distribution Proposal;
- 6) Compromise (Chapter XIII).

93 Ending Bankruptcy Proceedings After Declaring Bankruptcy

93.1 The Court shall end Bankruptcy Proceedings at the Administrator's proposal if the Bankruptcy Estate should not be sufficient to carry out all the payments stipulated in § 85.

93.2 The Court shall end Bankruptcy Proceedings at the grounds stipulated in § 93.1 before the Debtor has taken an oath as determined in § 37.

93.3 Bankruptcy Proceedings can be ended without taking an oath in case it had been impossible to take an oath and there would be reason to believe that the Debtor's property was not sufficient to make the payments stipulated in § 85.

93.4 The Court shall end Bankruptcy Proceedings at the Debtor's request in case the Debtor or a third person had paid the Debtor's debts or given a pledge as well as in the event the Court had approved standing bail for the satisfaction of claims.

94 End of Bankruptcy Proceedings in Connection of the Approval of the Distribution Proposal

Bankruptcy Proceedings shall be ended in case the Court had approved the Distribution Proposal regardless if the fact that money would or would not be received later on.

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95 Submitting Claims after the End of Bankruptcy Proceedings

95.1 The Creditors shall not be able to file claims arisen before Bankruptcy Proceedings and not submitted or approved after the end of Bankruptcy Proceedings in case the Court had not restored the date for submitting claims.

95.2 Claims arisen during Bankruptcy Proceedings as well as restored claims mentioned in the previous Section can be filed as a Suit. The term for the expiring of the Suit shall be calculated from the date of the end of Bankruptcy Proceedings.

95.3 Partially satisfied claims acknowledged during Bankruptcy Proceedings shall be fulfilled until their full satisfaction within 10 years after the end of Bankruptcy Proceedings according to the Distribution Proposal approved by Court (§81). The Court shall have the right to prolong this term upon serious grounds at the Creditor's proposal.

96 Dismissal of the Administrator and His Duties After the End of Bankruptcy Proceedings

96.1 The Court shall free the Administrator from his duties after the end of Bankruptcy Proceedings if there should be no reason to believe that additional property would be received after the end of Bankruptcy Proceedings.

96.1 The Administrator shall continue his activities selling and distributing property at the Court's order if case property shall continue to be received after the end of Bankruptcy Proceedings.

96.3 The Administrator shall submit a Report according to § 97.1 to the Court in case property shall be received to the Bankruptcy Estate after the end of Bankruptcy Proceedings. If no property shall be expected to be received the Administrator shall inform the Court who shall free him from his duties.

97 The Administrator's Report as to the Bankruptcy Proceedings

97.1 In case the Bankruptcy Proceedings shall not be ended within one year after the Declaration of Bankruptcy the Administrator shall submit a report to the Bankruptcy Committee and Court, including

1) the course of the Administrator's actions to end the Bankruptcy

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Proceedings;

- 2) gains and losses from the Bankruptcy Estate;
- 3) information about economic activities.

97.2 The Administrator shall continue to submit the Report mentioned in the previous section up to the end of Bankruptcy Proceedings.

XII THE COST OF BANKRUPTCY PROCEEDINGS, COMPENSATION OF LOSSES; FINES

98 The Costs of Bankruptcy Proceedings

98.1 The costs of Bankruptcy Proceedings shall be:

- 1) the Administrator's fee;
- 2) the costs of Court Proceedings in the Bankruptcy Suit;
- 3) cost of legal advice and other expenses of the Bankruptcy Proceedings.

98.2 Payments shall be made in the order determined in the previous Section in case there should be insufficient funds to cover all the expenses enumerated in the above Section.

99. The Administrator's Fee

The Court shall grant the Administrator a fee at the approval of a the Proposal for Distribution after considering the Debtor's and the Creditors' opinions. The fee shall be no less than one per cent of the money received from the sale of the Bankruptcy Estate. The Court shall have the right to grant a preliminary fee to the Administrator to be equalized at the end of Bankruptcy Proceedings. The Court shall grant an additional fee to the Administrator for carrying out his duties at the end of Bankruptcy Proceedings.

100 Compensation of Losses

100.1 The Administrator shall compensate losses of property culpably caused to the Debtor or the Creditor.

100.2 Losses caused by several Administrators shall be compensated jointly unless otherways resulted from the division of their tasks.

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100.3 In case the Creditor's Declaration of Bankruptcy should not be satisfied he shall cover cost of the proceedings. The Creditor shall compensate the losses risen from Court proceedings to the Debtor in case he had knowingly submitted a false declaration.

100.4 The Debtor shall cover the cost of Bankruptcy Proceedings from the Bankruptcy Estate in case the Bankruptcy Declaration shall be satisfied or the Bankruptcy Proceedings shall be ended in Compromise

101 Fines

101.1 The Court can order a fine to the Debtor for failing to fulfill obligations stipulated in §§ 36, 37, 38 and breaching interdiction stipulated in § 35.

101.2 The Court shall order a fine to the Creditor in case he had taken action within the Bankruptcy Proceedings knowingly harming the interests of other Creditors or the Debtor as well as for failing to hand in the report stipulated in § 78.3.

XIII COMPROMISE

102 The Concept of Compromise

102.1 Compromise shall be interpreted as an agreement between the Debtor and Creditors without prerogative rights as to the payment of debts decreasing debts or prolonging the term of payment.

102.2 Compromise shall be made at the Debtor's proposal during Bankruptcy Proceedings before or after the Declaration of Bankruptcy.

102.3 The decision about Compromise shall be passed at the General Meeting of Creditors Without Prerogative Rights (hereinafter: Creditors' General Meeting) and approved by the Court thus ending the Bankruptcy Proceedings

103 Proposal for Compromise

103 The Debtor shall determine the extent and term of his payment of Debts in the Compromise Proposal. The Debtor shall provide evidence as to his ability to meet the claims. The Debtor as a legal person shall submit a plan

for continuation of economic activities or the plan for reorganization of a legal person.

103.2 The Debtor shall add a report approved by the Administrator including information about the Debtor's property and debts as well as the balance sheet of a legal person, to the Compromise Proposal submitted before declaring Bankruptcy.

104 Reaching Compromise

104.1 Compromise can be made as to claims without prerogatives existing at the time of making a suggestion for Compromise

104.2 Compromise shall be reached in case

- 1) the Debtor proposes to pay at least one half of the total of claims without prerogative rights and at least 2/3 of the Creditors present, whose claims amount to at least 3/4 of the grand total of all the claims without prerogatives, had voted for the proposal.
- 2) or the Debtor proposes to pay less than one half of the total of claims without prerogative rights and at least 3/4 of the Creditors present, whose claims amount to at least 3/4 of the grand total of all the claims without prerogatives, had voted for the proposal.

104.3 Compromise shall be valid to all the Creditors without prerogatives regardless of his taking a vote or not.

107 Looking through the Compromise Propopsal after the Declaration of Bankruptcy

107.1 A Compromise Proposal submitted after the Declaration of Bankruptcy shall be looked through after defending the claims if it should take place.

107.2 The Administrator shall summon the Creditors' General Meeting within 15 days after the last Meeting for Defending the Claims.

107.3 In case the defending of claims shall not take place the Administrator shall summon the Creditors' General Meeting within seven days after the Debtor had given his oath.

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108 Approval of Compromise

108.1 The Court shall pass a decision approving Compromise within two weeks after the submission of the resolution of the Creditors' General Meeting (§104) to the Court.

108.2 The court shall fail to approve the Compromise in case

- 1) the stipulations of this Law have not been taken into consideration in the process of reaching Compromise or
- 2) the Debtor had favoured a Creditor in the process of reaching Compromise or Compromise had been reached on false grounds.

108.3 The Administrator shall summon a new Creditors' General Meeting within 15 days in case Compromise should not be approved according to § 108.2.1).

109 Consequences of Compromise

109.1 The Debtor shall regain the right to administrate his property, the sale of property shall be ended, the Bankruptcy Estate shall be returned to the Debtor and the distribution of property shall not take place according to a Court judgement approving Compromise.

109.2 Claims concerning which Compromise holds shall not be presented during the term of validity of Compromise (§ 111).

110 Announcing Compromise

The Administrator shall announce the approval of Compromise in writing press.

111 The Term of Validity of Compromise

111.1 The Creditors' General Meeting shall set a term of validity for Compromise at the Debtor's proposal.

111.2 The Court shall not declare the Debtor's Bankruptcy during the term of Compromise.

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112 Recovering of Property During Compromise

Recovering of property during Compromise can be carried out in the manner stipulated in this Law.

113 The Debtor's Oath During Compromise

The Court shall have the right to demand that the Debtor take an oath before making Compromise at the proposal of the Creditors' General Meeting in case the compromise proposal had been submitted before the Declaration of Bankruptcy.

114 Supervision over Carrying out Compromise

114.1 The Administrator shall supervise the carrying out of Compromise.

114.2 The Court shall appoint an Administrator proposed by the Creditors' General Meeting (meeting the standards set in § 29) together with approving Compromise in case the compromise had been reached before the Declaration of Bankruptcy.

115 Disaffirming Compromise

115.1 The Court shall disaffirm its judgement of Compromis at the Creditors' proposal in case

- 1) the Debtor had committed a Bankruptcy offence or
- 2) the Debtor had failed to carry out his Compromise obligations or
- 3) at least one half of the Compromise term had passed and the Debtor had evidently been unable to carry out the conditions of the Compromise.

115.2 The Bankruptcy Proceedings shall be continued upon the disaffirming the Compromise.

116 Prerogative Claims and Equalization in Compromise

Compromise shall have no effect upon a Creditor with prerogative rights or right for equalization. These Creditors shall not take part in voting at the Creditors' General Meeting within the extent of their prerogative or the equalized claim.

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117 Submission of Claims after the End of the Compromise Term

117.1 The Creditors can submit their claims after the end of the Compromise term, except for the parts of the claim that had been reduced by Compromise.

117.2 The principle stipulated in § 117.1 shall not be applied in case the Compromise was disaffirmed.

Signed by:

Arnold Rüütel
Chairman of the Supreme Soviet of
the Republic of Estonia

as of June 10, 1992

Translation from Estonian to English by *T. Agur*

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