

National Bank of Romania

Norm no. 18 as of 05/09/2006 regarding the organization and the internal control, the management of the significant risks, as well as the development of the activity of internal audit of the non-banking financial institutions

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Considering the provisions of art. 28 par. (4) letter b) and par. (5) letter e) title I of the Government Ordinance no. 28/2006 regarding the regulation of some financial-fiscal measures, approved with amendments and additions by the Law no. 266/2006,

By virtue of the provisions of art. 48 par. (1) of the Law no. 312/2004 regarding the Statute of the National Bank of Romania and of art. 72 title I of the Government Ordinance no. 28/2006, approved with amendments and additions by the Law no. 266/2006,

The National Bank of Romania issues this norm.

CHAPTER I
General provisions

Art. 1. – This norm applies to the non-banking financial institutions, Romanian legal entities and, accordingly, to the Romanian branches of the non-banking financial institutions, foreign legal entities, registered with the Special register, called hereinafter non-banking financial institutions, and regulates the general framework to be observed by them for :

- a)** the organisation and the internal control of the activity of the non-banking financial institutions;
- b)** the management of the significant risks by the non-banking financial institutions;
- c)** the organisation and the carrying out of the internal audit activity of the non-banking financial institutions.

Art. 2. – Within this norm, the terms and expressions below shall have the following meanings:

- a)** internal control – the continuous process attended by the board of directors, by the leaders, as well as by the personnel of the non-banking financial institutions, by which the reasonable assurance of the accomplishment of the objectives provided at art. 4 is provided;
- b)** information system – all the information flows organised in a unitary conception, providing the vertical connection between the leading level, respectively the decisional level, and the execution level, respectively the operational level, as well as the horizontal connection, inside these ones;
- c)** management of the significant risks – the process focussing on the analysis of the risk profile of the non-banking financial institution, for the establishment of an optimum ratio between the profit and the risks it undertakes during the activity carrying out;
- d)** significant risks – the risks with significant impact on the patrimonial and/or reputation-related situation of the non-banking financial institutions;
- e)** credit risk – the risk of registering losses or of not reaching the estimated profits, as result of the non-fulfilment by the counterpart of the contractual obligations;
- f)** market risk – the risk of registering losses or of not reaching the estimated profits, as result of the market fluctuations of the prices, of the interest rate and of the rate of exchange;
- g)** operational risk - the risk of registering losses or of not reaching the estimated profits, determined either by the use of inadequate processes, systems or human resources or by processes, systems or human resources not having fulfilled their function in an adequate manner, or by external factors, such as the economic conditions and the technological progress;
- h)** reputation-related risk - the risk of registering losses or of not reaching the estimated profits, as result of the lack of trust of the public in the integrity of the non-banking financial institutions;

i) legal risk – a component of the operational risk, determined by the non-enforcement or by the inadequate enforcement of the legal or contractual provisions, adversely affecting the operations or the situation of the non-banking financial institutions;

j) internal audit – an independent activity, destined for the improvement of the activity of the non-banking financial institutions, either by the fulfilment of the audit undertakings, or by the provision of counselling services to the audited structures / entities;

k) audit undertaking – an activity consisting in an objective examination of the modality of performance of the risk management, an examination of the internal control system and of the leading processes of the non-banking financial institutions, in order to provide the reasonable assurance of their adequate operation and of the fulfilment of the objectives of the non-banking financial institutions, as well as to formulate some recommendations of improvement of their activity;

l) organisational structure – the assembly made of departments and secondary offices of the non-banking financial institutions, to which tasks have been allotted, for an efficient operation, and between which subordination, collaboration and reporting relationships have been established.

CHAPTER II

Organisation and management of the non-banking financial institutions registered with the Special register

Art. 3. – Each non-banking financial institution shall have its own organisation and operation regulation, approved by the statutory bodies, by which at least the following shall be determined:

- a) the organisational structure of the non-banking financial institution;
- b) the tasks of each department of the non-banking financial institution and the relationships between them;
- c) the activities which may be carried out by the branches and other secondary offices of the non-banking financial institution;
- d) the tasks of the risk management committee and of the audit committee;
- e) the competences of the leaders, of the persons ensuring the leadership of the departments within the non-banking financial institution and of the secondary offices, as well as of the employed persons performing operations in the name and on behalf of the non-banking financial institution;
- f) the internal control system and the organisation and operation of the activity of internal audit .

SECTION 1

Organisation of the internal control of the activity of the non-banking financial institutions registered with the Special register

Art. 4. – The non-banking financial institutions shall organise the activity of internal control, in order to reach the following objectives:

- a) the efficient carrying out of the activity;
- b) the provision of credible, relevant and complete information, in due time, to the structures involved in the decision-making, within the non-banking financial institution, and to the information external users;
- c) the provision of the conformity of the activities of the non-banking financial institutions with the legal framework and with its own norms.

Art. 5. – In order to fulfil the internal control objectives, the non-banking financial institutions shall organise an internal control system referring to the following elements, closely related to each other:

- a) the role and the responsibility of the board of directors and of the leaders of the non-banking financial institutions;
- b) the identification and the assessment of the significant risks;
- c) the activities of control and the separation of responsibilities;
- d) the information and the communication;
- e) the activities of monitoring and correction of the deficiencies.

SECTION 2

Risk management committee

Art. 6. - (1) The non-banking financial institutions shall have a risk management committee at their disposal. The risk management committee is a permanent committee, made of at least 3 members, whose operation and tasks are regulated by this norm and by the internal regulations of each non-banking financial institution.

(2) The risk management committee is set up by the decision of the board of directors.

Art. 7. - (1) The non-banking financial institutions must own a regulation of the risk management committee, approved at the level of the board of directors and periodically reviewed, as the case may be, indicating its composition, authority and responsibilities.

(2) The risk management committee shall present to the board of directors, at least quarterly, reports on the activity carried out.

Art. 8. - (1) The members of the risk management committee shall have an experience corresponding to their related responsibilities.

(2) The risk management committee is made of leaders of the non-banking financial institution and of the departments, the activity of which is subject to significant risks.

Art. 9. – The risk management committee shall have at least the following tasks:

a) to inform the board of directors on the problems and on the significant evolutions that could influence the risk profile and the results of the non-banking financial institution;

b) to develop adequate procedures for the identification, the assessment, the monitoring and the control of the significant risks;

c) to present reasonably detailed information to the board of directors, in due time, allowing it to become acquainted with and to assess the performance of the management regarding the monitoring and the control of the significant risks, according to the procedures approved, as well as the overall performance of the non-banking financial institution;

d) to regularly inform the board of directors on the situation of exposures of the non-banking financial institution to risks and immediately, if significant changes occur in the current or future exposure of the non-banking financial institution to the said risks. .

SECTION 3

Audit committee

Art. 10. – The non-banking financial institutions shall have an audit committee, with advisory function, at their disposal. The audit committee is a permanent committee, made of a number of at least 3 members, the operation and tasks of which are regulated by this norm and by the internal regulations of each non-banking financial institution.

Art. 11. - (1) The president of the audit committee shall be a member of the board of directors of the non-banking financial institution.

(2) The members of the audit committee shall have an experience corresponding to their related tasks within the committee. At least one member shall have experience in the accounting and auditing field of activity.

Art. 12. – The non-banking financial institutions shall provide the members of the audit committee with the access to any data or records necessary for the fulfilment of its tasks .

Art. 13. – The audit committee shall have at least the following tasks:

a) the endorsement of the audit plan and of the need of resources relating to this activity;

b) the assurance of the relationship with the financial auditor of the non-banking financial institution, that is the reception of the audit plan and the analysis of its recommendations, as well as the analysis of the ascertained facts and of the recommendations of the supervision and control bodies outside the non-banking financial institution;

c) the assurance of the compliance with the provisions of the legal framework, of the articles of incorporation and of the norms approved by the board of directors.

Art. 14. – The audit committee may formulate recommendations addressed to the board of directors, regarding the internal control, the internal audit and the financial audit, as well as for the nomination of the financial auditor of the non-banking financial institution.

Art. 15. - (1) The board of directors of the non-banking financial institutions, with the agreement of the audit committee, may take the decision of the total or partial externalisation of the internal audit activity.

(2) The non-banking financial institutions may externalise the internal audit activity only to a specialised financial auditor, according to the provisions of art. 21, 38 and 39.

(3) The basic principles of the internal audit, provided at art. 43, shall also apply in case of externalisation of this activity.

CHAPTER III

Carrying out of the activities of internal control and of management
of the significant risks by the non-banking financial institutions
registered with the Special register

SECTION 1

Internal control activity

1.1. Activities of control and separation of responsibilities

Art. 16. – The activities of control shall form integral part of the daily activity of the non-banking financial institutions having as purpose the accomplishment of the objectives of art. 4.

Art. 17. – The activities of control shall be defined for each organisational level of the non-banking financial institutions and involve two stages:

- a) the establishment of the control procedures;
- b) the verification of the compliance with the control procedures established.

Art. 18. – The non-banking financial institutions shall perform an adequate distribution of the tasks at all the organisational levels and shall make sure that the personnel is not charged with other responsibilities leading to conflict of interests, such as the approval of the fund drawing and the actual drawing, the assessment of the credit documentation and the client monitoring after having contracted the credit.

1.2. Information and communication.

Art. 19. – The non-banking financial institutions shall have at their disposal adequate information systems able to cover all their activities and to include modalities of information processing in electronic format, so as to make possible the obtaining of audit tests.

Art. 20. – The organisational structure of the non-banking financial institutions shall provide adequate flows of information, on vertical, in both directions, on horizontal, allowing the following:

- a) the information of the board of directors and of the leaders on the risks relating to the activity and to the operation of the non-banking financial institutions;
- b) the information of the personnel on the work procedures established within the non-banking financial institutions;
- c) the transmission of information between the departments and the secondary offices of the non-banking financial institutions for which the said information is relevant.

Art. 21. – In case of externalisation of some activities, the board of directors and the leaders of the non-banking financial institutions are responsible for the accomplishment of the internal control objectives relating to the said activities.

SECTION 2

Management of the significant risks

Art. 22. – The non-banking financial institutions shall create a strategy regarding the management of the significant risks relating to the activity carried out, which shall be approved by the board of directors.

Art. 23. – The non-banking financial institutions shall take measures regarding the management of the following significant risks: the credit risk, the market risk, the operational risk and the reputation-related risk.

Art. 24. – The management of the significant risks shall provide the establishment of at least:

- a) a system of procedures for the authorisation of the operations subject to risks;
- b) a system for the establishment of the limits of exposure to risk and for their monitoring, as well as for the establishment of the competence levels for the exposure approval. The limits established at the level of the activities and/or departments / secondary offices shall be correlated to those established at the overall level of the non-banking financial institution;
- c) a system for the reporting of the measures of exposures to risks, as well as of other risk-related issues to the adequate management levels;
- d) some personal recruitment and remuneration criteria, establishing adequate standards as for its training, experience and integrity;

e) a personnel training program.

Art. 25. – The non-banking financial institutions shall provide a systematic monitoring of the conformity regarding the enforcement of the procedures established for the significant risks and shall settle the deficiencies ascertained.

2.1. Identification and assessment of the significant risks

Art. 26. – The identification and the assessment of the significant risks shall be performed both at the general level of a non-banking financial institution, as well as at all its organisational levels, they shall cover all its activities and shall take into account, as the case may be, the appearance of new activities.

Art. 27. - The identification and the assessment of the significant risks shall be performed by taking into account the internal factors, such as the complexity of the organisational structure, the type of the activities carried out, the quality of the personnel and its fluctuation, and the external factors, such as the economic conditions, the legislative changes or those relating to the competitive environment in the financial field and the technological process.

2.2. Management of the credit risk

Art. 28. - (1) The procedures of the non-banking financial institutions regarding the credit risk shall refer to their entire activity and shall consider both the credits at the individual level, as well as the entire portfolio.

(2) The procedures shall be established and implemented by the non-banking financial institutions so as to provide the following:

- a) the maintenance of healthy crediting standards;
- b) the monitoring and the control of the credit risk;
- c) the adequate assessment of the new business opportunities;
- d) the identification and the management of the non-performance credits;
- e) the assessment of the requirements to be met by the clients in order to enter into business relationship with the non-banking financial institution;
- f) the establishment of guarantees that may be accepted by the non-banking financial institution.

(3) For the prevention of entering into business relationships with persons involved in fraudulent activities and in other breaching activities, the non-banking financial institutions shall have strict procedures in force, including at least:

- a) the request of references and information from authorised persons;
- b) the analysis of the information put at the disposal of the non-banking financial institutions by structures, established under the form of the Banking Risk Centre or under the form of entities with similar activity, organised according to the law, having as purpose the collection and the supply of information relating to the situation of the counterpart, in its capacity as beneficiary of credits, or of other financial information;
- c) the knowledge of the structure of the participants to the share capital of the company, as well as of the persons charged with its administration, in case of clients, legal entities.

Art. 29. – The non-banking financial institutions shall assess the credit risk relating to the activities being affected by this risk, irrespective if they are reflected in the balance sheet or outside the balance sheet.

Art. 30. – When assessing the credit risk, the non-banking financial institutions shall take into account the elements relating to:

- a) the current and forecasted financial performance of the counterparts;
- b) the concentration of the exposures to counterparts, the markets on which they operate, the economic sectors and the countries where they are established;
- c) the capacity of enforcement, from the legal point of view, of the contractual undertakings;
- d) the capacity and the possibility of executing the guarantees, according to the market;
- e) the contractual undertakings with the persons having special relationships with the non-banking financial institutions;
- f) the destination of the credit and its reimbursement source;
- g) the history of the service of the debt relating to the counterpart.

Art. 31. - (1) The non-banking financial institutions shall have procedures in force for the approval of new credits, as well as for the restructuring of the existing ones (for instance: re-spreading out, re-financing).

(2) The re-financing of credits will not lead to their registration with a classification category more favourable as regards the credit risk.

(3) The non-banking financial institutions shall classify the re-spread out credits in more strictly conditions in relation to those associated with the initial status of the said credits.

Art. 32. - (1) The non-banking financial institutions shall proceed to the periodical assessment of the real guarantees.

(2) The non-banking financial institutions shall assess the capacity of the guarantors to undertake obligations, as for the personal guarantees.

Art. 33. - (1) The non-banking financial institutions shall have information systems at their disposal allowing the reporting in due time of the issues relating to the credit risk, focussing on the putting into evidence of the non-performance credits and/or on the identification of the non-conformities with the exposure limits established.

(2) The information systems shall provide adequate data regarding the composition of the portfolio of credits, as well as information allowing the identification of any concentration of risks.

(3) The management risk committee shall send for analysis, at least quarterly, to the board of directors, reports regarding the monitoring of the crediting activity and the management of the credit risk.

Art. 34. – The system for monitoring the credit risk shall comprise at least the following:

a) the analysis of the financial standing of the counterpart;

b) the supervision of the observance by the counterpart of the contractual clauses;

c) the assessment of the level of covering with guarantees of the exposure in relation to the current standing of the counterpart;

d) the update of the relevant information comprised in the credit file.

Art. 35. – Within the internal control activities, the non-banking financial institutions shall have systems at their disposal for the identification in due time of the credits the quality of which is damaged and for the management of the non-performance credits.

2.3. Management of other significant risks

Art. 36. - (1) The non-banking financial institutions shall develop procedures and systems for the identification, assessment and monitoring of the market, operational and reputation-related risk.

(2) If the risks mentioned at par. (1) are assessed as significant risks, the non-banking financial institutions shall have at their disposal procedures for their management .

Art. 37. - (1) The non-banking financial institutions shall have an adequate information system for the assessment, the monitoring, the control and the reporting of the exposures affected by the risks provided at art. 36.

(2) The reports shall be sent to the leaders and, in a synthetic form, to the board of directors.

2.4. Management of the risks associated with externalised activities

Art. 38. – The non-banking financial institutions shall have in force procedures for the management of the risks associated with externalised.

Art. 39. – The non-banking financial institutions may not externalise the following:

a) the crediting activity carried out in according to the object of activity established by the articles of incorporation;

b) the internal audit activity, if the external service provider in the internal audit field of activity acts also as financial auditor of the said non-banking financial institution;

c) the accounting book organisation and keeping, if between the persons to whom the bookkeeping activity would be externalised and the financial auditor there are relationships affecting its independence in exercising the mandate;

d) the activities which, as result of the externalisation, may not be controlled and carried out any longer in compliance with the regulations in force.

CHAPTER IV

Internal audit activity

SECTION 1

Objective of the internal audit

Art. 40. – The non-banking financial institutions shall organise the internal audit as a component of the activity of monitoring of the internal control system, in order to fulfil the objective regarding the improvement of their activity.

Art. 41. – The internal audit shall cover all the activities of the non-banking financial institution, including the activities of the secondary offices in the country or abroad.

Art. 42. – For the fulfilment of the objective, the internal audit of the non-banking financial institutions shall include mainly, within an audit undertaking, the following activities:

a) the assessment of the efficiency and of the level of adequacy of the internal control system;

b) the assessment of the modality of application and of the efficiency of the risk management procedures and of the methodologies of assessment of the significant risks;

c) the analysis of the relevance and of the integrity of the data supplied by the financial and the management information systems, including the computer system;

d) the assessment of the accuracy and of the credibility of the accounting records and of the financial statements;

e) the assessment of the manner in which the balance sheet patrimonial elements and those outside the balance sheet are protected and the identification of the methods of prevention of the frauds and losses of any kind;

f) the assessment of the manner in which the legal framework provisions are observed, of the manners in which the possible measures imposed by the National Bank of Romania are enforced, as well as the assessment of the manner in which the procedures of the non-banking financial institution are implemented.

SECTION 2

Carrying out of the internal audit activity

Art. 43. – During the carrying out of the internal audit activity, the following basic principles shall be observed:

- a) the permanence;
- b) the independence;
- c) the objectivity and the impartiality;
- d) the integrity and the professional competence;
- e) the confidentiality.

Art. 44. – The internal audit activity involves, for the development of the audit undertakings, the carrying out of the following stages:

- a) the planning of the internal audit activity;
- b) the examination and the assessment of the information obtained;
- c) the communication of the results;
- d) the monitoring of the implementation of the given recommendations.

Art. 45. – The internal audit plan, approved by the board of directors, shall include the objectives, the terms and the frequency of the audit undertakings, as well as the necessary resources.

Art. 46. – For each audit undertaking of the audit plan, an audit report shall be drawn up. The audit report shall be sent to the management of the audited structure, to the audit committee and to the board of directors of the non-banking financial institution.

Art. 47. – As result of the analysis of the internal audit recommendations, the leader/leaders charged with the coordination of the audited structure decides/decide on the implementation of the said recommendations.

Art. 48. – The internal audit supervises the modality of implementation of the recommendations formulated during the carrying out of this activity and reports it, at least quarterly, to the leaders, the board of directors and the audit committee.

Art. 49. – If the non-banking financial institution is part of a group at the level of which there is a specialised internal audit department, this one can perform the internal audit activity also at the level of the non-banking financial institution, provided that the principles and the requirements of this norm should be observed.

CHAPTER V

Final provisions

Art. 50. – The non-banking financial institutions shall draw up a yearly report on the activity carried out in the following fields of activity: internal control, management of the significant risks and internal audit, which shall be analysed by the board of directors.

Art. 51. – The non-observance of the provisions of this norm causes the enforcement of sanctions or, as the case may be, the application of the measures provided in title I of the Government Ordinance no. 28/2006 regarding the regulation of some financial-fiscal measures, approved with amendments and additions by the Law no. 266/2006.

President of the Board of Directors
of the National Bank of Romania,
Mugur Constantin Isărescu

Bucharest, September 5th, 2006.
No. 18.