

Issuer:	Riigikogu
Type:	act
In force from:	15.01.2018
In force until:	13.05.2018
Translation published:	10.01.2018

Credit Institutions Act¹

Passed 09.02.1999
RT I 1999, 23, 349
entry into force pursuant to § 142

Amended by the following acts

Passed	Published	Entry into force
19.04.2000	RT I 2000, 35, 222	01.07.2000
11.05.2000	RT I 2000, 40, 250	01.07.2000
09.05.2001	RT I 2001, 48, 268	01.01.2002
14.11.2001	RT I 2001, 93, 565	01.02.2002
13.12.2001	RT I 2001, 102, 672	01.01.2002, partially according to § 59
Full text on RT hard version	RT I 2002, 17, 96	
29.01.2002	RT I 2002, 21, 117	04.03.2002
20.02.2002	RT I 2002, 23, 131	01.07.2002
05.06.2002	RT I 2002, 53, 336	01.07.2002
19.06.2002	RT I 2002, 63, 387	01.09.2002
20.11.2002	RT I 2002, 102, 600	26.12.2002
04.12.2002	RT I 2002, 105, 612	02.01.2003
22.01.2003	RT I 2003, 17, 95	01.01.2004
11.02.2003	RT I 2003, 23, 133	08.03.2003
03.12.2003	RT I 2003, 81, 544	01.01.2004
14.04.2004	RT I 2004, 30, 208	01.05.2004
14.04.2004	RT I 2004, 36, 251	01.05.2004
22.04.2004	RT I 2004, 37, 255	01.05.2004
25.11.2004	RT I 2004, 86, 582	01.01.2005
Full text on RT hard version	RT I 2005, 8, 32	
09.02.2005	RT I 2005, 13, 64	18.03.2005, amendments are applied retrospectively from 1 January 2005
15.06.2005	RT I 2005, 39, 308	01.01.2006
19.10.2005	RT I 2005, 59, 463	15.11.2005, regarding electronic money institutions upon entry into force of Electronic Money Institutions Act
19.10.2005	RT I 2005, 61, 473	01.01.2006
31.05.2006	RT I 2006, 28, 208	01.07.2006, partially 01.01.2007
14.12.2006	RT I 2006, 63, 467	01.01.2007
15.02.2007	RT I 2007, 24, 127	01.01.2008
24.10.2007	RT I 2007, 58, 380	19.11.2007
21.11.2007	RT I 2007, 65, 405	15.12.2007
19.12.2007	RT I 2008, 3, 21	28.01.2008
15.10.2008	RT I 2008, 47, 261	01.01.2009
10.12.2008	RT I 2008, 59, 330	01.01.2009
10.06.2009	RT I 2009, 37, 250	10.07.2009
15.06.2009	RT I 2009, 39, 262	24.07.2009
26.11.2009	RT I 2009, 61, 401	26.12.2009

17.12.2009	RT I 2010, 2, 3	22.01.2010
28.01.2010	RT I 2010, 7, 30	26.02.2010
27.01.2010	RT I 2010, 9, 41	08.03.2010, partially 01.01.2013; entry into force partially changed 01.01.2014 [RT I, 22.09.2011, 3]; entry into force partially changed 01.01.2015 [RT I, 23.12.2013, 4]
22.04.2010	RT I 2010, 20, 103	01.07.2010
22.04.2010	RT I 2010, 22, 108	01.01.2011, entry into force on the date provided for in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the grounds provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, p. 24-26).
12.05.2010	RT I 2010, 26, 129	05.10.2010
09.06.2010	RT I 2010, 34, 182	01.07.2010
09.12.2010	RT I, 21.12.2010, 6	31.12.2010
08.12.2010	RT I, 21.12.2010, 3	01.01.2011
26.01.2011	RT I, 18.02.2011, 1	01.08.2011
23.02.2011	RT I, 24.03.2011, 1	03.04.2011, partially 01.08.2011
09.06.2011	RT I, 29.06.2011, 1	30.06.2011
16.06.2011	RT I, 08.07.2011, 6	18.07.2011
15.09.2011	RT I, 22.09.2011, 3	02.10.2011
12.10.2011	RT I, 02.11.2011, 1	12.11.2011
23.11.2011	RT I, 13.12.2011, 1	01.01.2012
07.03.2012	RT I, 29.03.2012, 1	30.03.2012, partially 01.01.2013
06.06.2012	RT I, 29.06.2012, 1	01.04.2013, partially 01.01.2014
20.06.2013	RT I, 12.07.2013, 2	22.07.2013
11.12.2013	RT I, 23.12.2013, 1	01.01.2014, partially 01.01.2020
05.12.2013	RT I, 23.12.2013, 4	02.01.2014, partially 01.01.2014
16.04.2014	RT I, 09.05.2014, 2	19.05.2014
19.06.2014	RT I, 12.07.2014, 1	01.01.2015
18.12.2014	RT I, 23.12.2014, 15	01.01.2015
27.02.2015	RT I, 03.03.2015, 1	27.02.2015 – The judgment of the Constitutional Review Chamber of the Supreme Court declares to be in conflict with the Constitution and repeals subsection 50 (2) of the Credit Institutions Act.
18.02.2015	RT I, 19.03.2015, 3	29.03.2015
18.02.2015	RT I, 19.03.2015, 4	29.03.2015
10.06.2015	RT I, 07.07.2015, 1	01.01.2016
16.12.2015	RT I, 31.12.2015, 38	10.01.2016
23.02.2016	RT I, 11.03.2016, 1	21.03.2016
15.06.2016	RT I, 06.07.2016, 2	16.07.2016
14.12.2016	RT I, 31.12.2016, 1	10.01.2017
14.12.2016	RT I, 31.12.2016, 3	10.01.2017
08.02.2017	RT I, 22.02.2017, 1	01.01.2018
08.02.2017	RT I, 03.03.2017, 1	01.07.2017
08.03.2017	RT I, 23.03.2017, 1	01.04.2017
05.04.2017	RT I, 20.04.2017, 1	15.01.2018
07.06.2017	RT I, 26.06.2017, 1	06.07.2017
07.06.2017	RT I, 26.06.2017, 17	06.07.2017
14.06.2017	RT I, 30.06.2017, 1	01.07.2017
19.06.2017	RT I, 07.07.2017, 2	01.01.2018
26.10.2017	RT I, 17.11.2017, 2	27.11.2017
13.12.2017	RT I, 30.12.2017, 3	03.01.2018

Chapter 1

GENERAL PROVISIONS

§ 1. Scope of application of Act

(1) This Act regulates the foundation, activities, dissolution, liabilities and supervision of credit institutions.

(2) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act and the Financial Supervision Authority Act. [RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 2. Application of Act

(1) This Act applies to all credit institutions being founded, founded and operating in Estonia, to parent companies and subsidiaries thereof, including financial holding companies, mixed-activity holding companies and mixed financial holding companies, as well as the branches and representative offices of credit institutions. [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) This Act also applies to subsidiaries, branches and representative offices of Estonian credit institutions in foreign states, unless otherwise prescribed by the legislation of the state where they are registered, and to subsidiaries, branches and representative offices of foreign credit institutions in Estonia, unless otherwise provided by international agreements entered into by Estonia.

(3) Eesti Pank is not deemed to be a credit institution.

(4) A credit institution providing investment service or ancillary investment service for the purposes of the Securities Market Act shall be applied the provisions of §§ 45, 46¹, 48 and 49, clause 54 (1) 14), §§ 65, 69 and 70, subsections 79 (5)–(8), subsections 79¹(2) and (4), §§ 81¹, 82, 82³–83², 132, 134¹ and 138¹, Chapters 10, 13¹, 17 and 18¹, Chapter 21 Division 6 and Part 6 of the Securities Market Act and of the legislation established for the improvement or implementation of them or on the basis thereof. [RT I, 30.12.2017, 3 - entry into force 03.01.2018]

(5) A credit institution that provides or recommends an investment risk deposit for the purposes of subsection 89¹(2) of this Act shall be applied the provisions of subsection 47 (7) of the Securities Market Act. [RT I, 30.12.2017, 3 - entry into force 03.01.2018]

§ 3. Form of business of credit institution and functioning as provider of vital service

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) A credit institution may operate as a public limited company or commercial association and the provisions of law regarding public limited companies or savings and loan associations apply thereto unless otherwise provided by this Act.

(2) A credit institution and branch of a foreign credit institution is a provider of vital service specified in clauses 36 (3) 1) and 2) of the Emergency Act if at least one of the following conditions has been met: [RT I, 03.03.2017, 1 – entry into force 01.07.2017]

- 1) the interruption or termination of the services provided materially affects the stability of the Estonian financial market and the regular functioning of the payment and settlement systems;
- 2) the number of its clients forms a significant part of the number of the clients using financial services in Estonia;
- 3) the market share of its deposits involved in Estonia exceeds ten per cent of the total amount of the deposits involved by credit institutions.

(3) Eesti Pank shall approve the list of credit institutions and branches of foreign credit institutions providing a vital service provided for in subsection (2) of this section. [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 3¹. Terms

Terms not specified in this Act are used for the purposes of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337). [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 4. Receipt of deposits from public

(1) Credit institutions have the exclusive right to receive money from the public for the purposes of depositing or to receive repayable funds in any other manner.

(1¹) The receipt of funds necessary for provision of the services specified in subsection 3 (1) and subsection 6 (3) of the Paying Institutions and E-money Institutions Act is not deemed to be deposit or receipt from the public of other repayable funds within the meaning of this section if e-money is immediately issued against such funds.

[RT I 2010, 2, 3 - entry into force 22.01.2010]

(2) For the purposes of this Act, deposits or other repayable funds are deemed to be received from the public if the proposal to deposit money or receive repayable funds in any other manner is made to the public.

(3) For the purposes of this Act, the public are deemed to be a previously unspecified set of persons.

(4) The provisions of subsection (1) of this section do not apply to the receipt of money from the public for depositing or to the receipt of other repayable funds in any other manner by:

- 1) states which are contracting parties to the EEA agreement (hereinafter contracting state);
- 2) local or regional governments of EEA states;
- 3) international organisations or other international institutions governed by public law of which a contracting state is a member;
- 4) legal persons to the extent to which they have the right, pursuant to the legislation of a contracting state or the European Union, to receive funds from the public provided that such activities are subject to supervision for the protection of depositors and investors.

§ 5. Financial institution

For the purposes of this Act, a financial institution is a company other than a credit institution, the principal and permanent activity of which is to acquire holdings or conclude one or more of the transactions specified in clauses 6 (1) 2)-12) of this Act.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 6. Financial services

(1) For the purposes of this Act, financial services are services to third parties rendered by a person in the course of professional or economic activities which consist of the conclusion of the following transactions and acts:

[RT I 2004, 86, 582 - entry into force 01.01.2005]

- 1) deposit transactions for the receipt of deposits and other repayable funds from the public;
 - 2) borrowing and lending operations, including consumer credit, mortgage credit, factoring and other transactions for financing business transactions;
 - 3) leasing transactions;
 - 4) payment services for the purposes of the Paying Institutions and E-Money Institutions Act;
- [RT I 2010, 2, 3 - entry into force 22.01.2010]
- 5) issue and administration of non-cash means of payment, e-g. electronic payment instruments, electronic money, traveller's cheques and bills of exchange;
- [RT I, 08.07.2011, 6 - entry into force 18.07.2011]
- 6) guarantees and commitments and other transactions creating binding obligations to persons in future;
 - 7) transactions for their own account or for the account of clients in traded securities provided in § 2 of the Securities Market Act and in foreign exchange and other money market instruments, including transactions in cheques, exchange instruments, certificates of deposit and other such instruments;
 - 8) transactions and acts related to the issue and sale of securities;
 - 9) provision of advice to clients on issues concerning economic activities, and transactions and acts related to the merger or division of companies or participation therein;
 - 10) money broking;
 - 11) portfolio management and consultation on investment issues;
 - 12) safekeeping and administration of securities;
 - 13) collection, processing and transmission of credit information;
 - 14) safe custody services;
 - 15) other transactions and acts which are essentially similar to the financial transactions specified in clauses 1)-14) of this section.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(2) A credit institution may conclude transactions and perform acts other than those specified in subsection (1) of this section if these are directly ancillary or supplementary to its principal activity. In order to conclude such transactions or perform such acts, a credit institution may found a company or gain control over another company (hereinafter ancillary undertaking).

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) For the purposes of this Act, an ancillary undertaking of a credit institution is a company the principal and permanent activity of which is the administration of immovable property, the provision of information

technology services, or other activities which are ancillary or supplementary to the principal activities of one or several credit institutions.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 7. Parent company and subsidiary

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 8. Mixed financial holding company, financial holding company and mixed-activity holding company

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 9. Consolidation group of credit institution

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 10. Holding of voting rights

Calculation of voting rights and determination of controlled companies shall be based on the provisions of § 10 of the Securities Market Act.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 11. Representative offices of credit institutions

RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) [Repealed – RT I 2001, 102, 672 - entry into force 01.01.2002]

(3) For the purposes of this Act, a representative office of a credit institution is a structural unit which is located separately from the seat of the credit institution and the purpose of the activities of which is to represent the credit institution and protect the interests thereof in a particular territory.

(4) Representative offices of credit institutions are prohibited from engaging in commercial activities.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 12. Business names of credit institutions and use of word “pank” [bank] therein

(1) A credit institution founded as a public limited company is required to use the word “*pank*” [bank] in the business name thereof and a credit institution founded as an association is required to use the word “*ühistupank*” [association bank] in the business name thereof.

(2) Only credit institutions may use the words “pank” or “*ühistupank*” or derivatives or foreign language equivalents thereof in their business names.

(3) A branch of a credit institution may add the place name of the administrative unit in which the branch is located or other place names to the business name of the credit institution.

(4) A foreign credit institution may operate in Estonia under a business name which is registered in a state where the institution is founded (hereinafter home state) if the name is clearly distinguishable from other business names entered in the commercial register in Estonia. If there is any danger that a business name is not clearly distinguishable from the business names of other credit institutions operating in Estonia, the Financial Supervision Authority has the right to demand that such business name be accompanied by an attribute.

(5) The business name of a credit institution shall not be such as to be confused for another credit institution or a state central bank.

(6) Subsections (1) and (2) of this section do not apply to cases in which it is evident that the institution in question is not a credit institution.

[RT I 2004, 36, 251 - entry into force 01.05.2004]

Chapter 2

AUTHORISATION OF CREDIT INSTITUTION

§ 13. Authorisation and identification code

(1) A company that wishes to receive cash deposits or receive other repayable funds from the public in any other manner must hold a corresponding authorisation (hereinafter *authorisation*). An authorisation grants the right to provide investment services specified in subsection 43 (1) of the Securities Market Act and ancillary services of an investment service specified in § 44 of the Securities Market Act to the extent specified in the authorisation.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

(1) A company who wishes to receive cash deposits or receive other repayable funds from the public in any other manner must hold a corresponding authorisation (hereinafter *authorisation*). An authorisation grants the right to provide investment services specified in subsection 43 (1) of the Securities Market Act and ancillary investment services specified in § 44 of the Securities Market Act to the extent specified in the authorisation.

[RT I 2007, 58, 380 - entry into force 19.11.2007]

(2) The Financial Supervision Authority shall grant authorisation to companies founded in Estonia. The registered office and head office of a credit institution authorised by the Financial Supervision Authority must be in Estonia.

[RT I, 20.04.2017, 1 - entry into force 15.01.2018]

(3) An authorisation is granted for an unspecified term.

(3¹) Upon granting authorisation, the Financial Supervision Authority shall issue, at the prior request of the applicant, the right to use the identification code and the identification code itself, which is a unique two-digit numeric identifier in an international payment account number and which enables identification of the credit institution upon the performance of the payment instruction and automatic processing thereof.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(4) An authorisation is not transferable, and the use thereof by other persons is prohibited.

§ 13¹. Application for authorisation

(1) In order to apply for authorisation, the members of the management board entered in the memorandum of association or registry card of the company being founded or operating (hereinafter *applicant*) shall submit a written application and the following documents and information (hereinafter in § 13¹–18 of this Act *application*):

1) a copy of the articles of association and in case of an operating company, a decision on amendment of the articles of association together with the amended text of the articles of association;

2) upon foundation of a company, a notarised copy of the foundation agreement or resolution and a document certifying the resources for payment of the share capital;

3) the business plan which complies with the requirements provided for in § 13² of this Act;

4) for an operating company, documents certifying the size of own funds together with a sworn auditor's report;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

5) the applicant's starting balance sheet and an overview of revenue and expenditure or, for an operating company, the balance sheet and income statement as of the end of the month preceding the month of submission of application and the last three annual reports if they exist;

6) information on the information technology and other technological means and systems, security systems, control mechanisms and systems needed for provision of the planned financial services;

7) internal rules and rules of procedure to regulate the activities or drafts thereof which meet the requirements provided in § 63 of this Act and if the business plan specified in § 13² of this Act includes providing investment services, meet the requirements regarding internal rules provided in the Securities Market Act;

[RT I 2007, 58, 380 - entry into force 19.11.2007]

8) accounting policies and procedures of draft thereof;

9) statutes of the internal audit unit or draft thereof;

10) information on the members of the applicant's board of management and supervisory board, head of the internal audit unit or revision committee (hereinafter in this Chapter *managers*), including, for each person, the name and surname, personal identification code or, in the absence thereof, date and place of birth, educational background, a complete list of places of employment and positions and, for the members of the board of management, a description of their areas of responsibility and documents certifying the trustworthiness of the managers and conformity to the requirements of this Act, which the applicant deems necessary to submit;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

11) information on the auditor of the applicant, including the name, residence or seat, personal identification code or, in the absence of the identification code, the date of birth or registry code of the auditor;

12) a list of the shareholders or members of the applicant which sets out the name and the personal identification code or registry code of each shareholder or member, or the date of birth in the absence of a personal identification code or registry code, and information on the number of shares and votes to be acquired or owned by each shareholder or member;

13) documents for last three years certifying the financial status of a natural person who is a shareholder or member of the applicant if his or her share capital or amount of contribution exceeds 2 per cent of the share capital or votes in the applicant;

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

14) the articles of association of a legal person who is a shareholder or member of the applicant and annual reports for last three years together with the auditor's reports and the list of shareholders together with data relating to the percentage of their share in the share capital of the respective company if the share or amount of contribution of the legal person exceeds 5 per cent of the share capital or votes in the applicant;

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

15) information specified in § 30 of this Act on persons who own qualifying holdings in the applicant;

16) information on companies in which the holding of the applicant or a manager thereof exceeds 20 per cent, which also sets out the amount of share capital, a list of the areas of activity and the size of the holding of the applicant or manager;

17) a document by which applicant assumes the obligation to pay the single contribution prescribed in the Guarantee Fund Act and, if the business plan specified in § 13² of this Act includes providing investment services, the obligation to pay the single contribution to the Investor Protection Sectoral Fund prescribed in the Guarantee Fund Act.

[RT I 2007, 58, 380 - entry into force 19.11.2007]

(1¹) The partnership agreement or articles of association of a credit institution is required to determine that the registered office and head office of the credit institution is in Estonia.

[RT I, 20.04.2017, 1 - entry into force 15.01.2018]

(2) If, during the processing of an application for an activity licence, there are changes in the information or documents specified in subsection (1) of this section, the applicant shall submit the corresponding updated information or documents to the Financial Supervision Authority immediately after making or becoming aware of the amendments.

(3) The accuracy of information and documents submitted concerning natural persons specified in clauses (1) 10) and 11) of this section shall be confirmed by the signature of the persons.

(4) In order to obtain authorisation for an association bank, the data and documents specified in clause 1 (10) of this section shall also be submitted concerning the members of the revision committee in addition to the information required by subsection (1) of this section.

§ 13². Business plan

(1) A business plan shall include a description of the character of the planned business activities, organisational structure, internal audit system and management structure of the applicant, and also a description, forecast and analysis of the following factors:

- 1) the size of the assets, share capital and shareholders' equity of the applicant;
- 2) the level of the technical administration of the activities of the applicant;
- 3) strategy and market share in which the applicant proposes to engage in activities;
- 4) proposed activity, provided services and offered products, presumed clients and competition conditions on the market;
- 5) annual balance sheet and financial indicators including revenue, expenditure, profit and cash flows, and the presumptions which constitute the basis thereof;
- 6) credit and investment policies;
- 7) general principles and strategy of risk management.

(2) A business plan shall be submitted for at least three years.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 13³. Review of applications for authorisation

(1) If an applicant has failed to submit all the information and documents specified in § 131 of this Act, or if such information or documents are incomplete or have not been prepared in accordance with the requirements, the Financial Supervision Authority has the right to demand elimination of the deficiencies by the applicant.

(2) The Financial Supervision Authority may demand the submission of additional information and documents if it is not convinced on the basis of the information and documents specified in § 13¹ of this Act as to whether the applicant for authorisation has adequate facilities for the provision of financial services or whether it meets the requirements for credit institutions prescribed by this Act or legislation issued on the basis thereof or if other circumstances relating to the applicant need to be verified.

(3) In order to verify the information submitted by an applicant, the Financial Supervision Authority may perform on-site inspections, order an assessment or special audit, consult state databases, obtain spoken

explanations from the applicant's managers and auditors, their representatives and where necessary, third parties concerning the content of documents and facts which are relevant in making a decision on the grant of authorisation.

(4) The information and documents specified in subsections (1)–(3) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant has failed to eliminate the deficiencies specified in subsection (1) of this section within the prescribed term or has not submitted the information or documents requested by the Financial Supervision Authority by the end of the term. Upon refusal to review an application, the Financial Supervision Authority shall return the submitted documents.

(6) Upon processing of an application for authorisation, the Financial Supervision Authority shall cooperate with the financial supervision authority of the corresponding contracting state if:

1) the applicant is a parent undertaking or subsidiary of a credit institution, management company, investment fund, investment firm, insurance undertaking, paying institution, e-money institution or other person subject to financial supervision established in a contracting state;

2) the subsidiary of a parent undertaking is a credit institution, management company, investment fund, investment firm, insurance undertaking, paying institution, e-money institution or other person subject to financial supervision established in a contracting state;

3) the applicant and a credit institution, management company, investment fund, investment firm, insurance undertaking, paying institution, e-money institution or other person subject to financial supervision established in a contracting state are companies controlled by one and the same person.

[RT I 2010, 2, 3 - entry into force 22.01.2010]

§ 14. Decision on grant of authorisation

(1) The Financial Supervision Authority shall make a decision to grant or refuse to grant authorisation within six months after receipt of all the necessary documents and information which meet the requirements, but not later than within twelve months after receipt of the application for authorisation.

(2) Upon granting authorisation, the Financial Supervision Authority may set secondary conditions to the applicant based on the circumstances provided in subsection 15 (1) of this Act.

(3) The Financial Supervision Authority shall have the decision to grant or refuse to grant authorisation delivered to the applicant without undue delay.

(4) The provisions of subsection 250 (4) of the Commercial Code and subsection 7 (3) of the Commercial Associations Act shall not apply to entry of applicants in the commercial register. The management board of the applicant is required to submit a petition for entry in the commercial register within six months as of the delivery of the decision to grant authorisation.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 15. Bases for refusal to grant authorisation

(1) The Financial Supervision Authority may refuse to grant authorisation to the applicant if:

1) the applicant does not meet the requirements for credit institutions provided for in this Act or legislation issued on the basis thereof;

2) the resources for full payment of the share capital of a company being founded or existence of adequate own funds are not proved;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

3) the applicant does not have the necessary funds or experience to operate as a credit institution with continuity;

4) the managers, auditor or shareholders of the applicant do not meet the requirements provided for in this Act or legislation established on the basis thereof;

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

5) close links between the applicant and another person prevent adequate supervision over the applicant, or the requirements arising from legislation or the implementation of legislation of the state where the persons with whom the applicant has close links is established prevent adequate supervision over the applicant;

6) the information submitted by the applicant indicates that the applicant mainly plans to operate in another contracting state;

7) the internal rules of a credit institution specified in § 63 of this Act are not adequately accurate or unambiguous for regulation of the activities of the credit institution;

8) the applicant or its managers have been punished for an economic offence, official misconduct, offence against property or offence against public trust and information concerning the punishment has not been expunged from the punishment register pursuant to the Punishment Register Act.

(2) Among other matters, the following shall be considered upon assessment of that provided for in clause (1) 3) of this section:

1) the level of the organisational and technical administration of the activities of the applicant;

- 2) the educational background, work experience, business connections, trustworthiness and reputation of the persons connected with the management of the applicant;
 - 3) the adequacy and sufficiency of the business plan provided for in § 13² of this Act;
 - 4) the activities, financial situation, reputation and experience of the applicant, its parent company and persons belonging to the same consolidation group as the applicant.
- [RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 15¹. Amendment of decision on grant of authorisation

(1) Upon change to the business name or address of a credit institution the Financial Supervision Authority shall make a decision on amendment of the decision on grant of authorisation specified in subsection 14 (1) of this Act.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(2) The Financial Supervision Authority shall decide on amendment of the decision on grant of authorisation within one month after receipt of the changes to the data specified in subsection (1) of this section.

(3) The Financial Supervision Authority shall have the decision specified in subsection (1) of this section delivered to the credit institution without undue delay.

§ 16. Termination of authorisation

Authorisation terminates:

- 1) in the event of the merger of the credit institution on the basis of subsection 65 (2) of this Act, upon the entry of the new credit institution in the commercial register;
 - 2) in the event of the merger of the credit institution on the basis of subsection 65 (3) of this Act, upon the entry of the merger in the commercial register;
 - 3) in the event of the voluntary dissolution of the credit institution, upon the receipt of authorisation for voluntary dissolution from the Financial Supervision Authority;
 - 4) in the event of revocation of authorisation, upon the revocation of the authorisation;
 - 5) in the event of the bankruptcy of the credit institution, upon declaration of bankruptcy by a court.
- [RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 17. Revocation of authorisation and identification code

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(1) The Financial Supervision Authority may revoke authorisation if:

- 1) the credit institution fails to commence activities or if an act or omission by the founders of the credit institution shows that the credit institution will be unable to commence activities within twelve months as of the issue of authorisation, or if the activities of the credit institution are suspended for more than six consecutive months;
- 2) it has become evident that the credit institution has submitted misleading information or documents, or incorrect information or falsified documents to the Financial Supervision Authority, or such documents have been submitted upon application for authorisation;
- 3) the credit institution does not meet the requirements in force with regard to grant of authorisation;
- 4) the circumstances provided for in clauses 15 (1) 4) or 5) become evident;
- 5) the credit institution has repeatedly or materially violated provisions of legislation regulating the activities thereof, the credit institution or manager thereof has been imposed a punishment for an economic offence, official misconduct, offence against property or offence against public trust if information concerning the punishment has not been expunged from the punishment register pursuant to the Punishment Register Act or the activities or omissions of the credit institution are not in compliance with good practice;
- 6) the credit institution fails to comply with the secondary conditions specified in subsection 14 (2) of this Act;
- 7) the credit institution belongs to a consolidation group the structure of which prevents the receipt of information necessary for supervision on a consolidated basis, or if a company which belongs to the same consolidation group as the credit institution operates on the basis of legislation of a foreign state, which prevents the exercise of adequate supervision;
- 8) the credit institution has published materially incorrect or misleading information or advertising concerning its activities or members of its directing bodies;
- 9) the credit institution is unable to perform the obligations it has assumed or if, for any other reason, its activities significantly damage the interests of depositors or other clients, currency circulation or adversely affect the regular functioning of the money or capital markets;
- 10) the amount of own funds of the credit institution does not comply with the requirements provided by this Act or legislation issued on the basis thereof;
- 11) it becomes evident that the credit institution has chosen Estonia as the place for application for authorisation and registration in order to evade compliance with stricter requirements established for credit institutions in another contracting state where the credit institution mainly operates;

- 12) the credit institution engages in money laundering, or violates the procedure established by legislation for the prevention of money laundering or terrorist financing;
- 13) the credit institution fails to pay contributions to the Deposit Guarantee Sectoral Fund and Investor Protection Sectoral Fund prescribed in the Guarantee Fund Act for the specified term or in full, and has failed to implement a corresponding precept of the Financial Inspectorate within the term or to the extent prescribed;
- 14) the credit institution has failed to implement a precept of the Financial Supervision Authority within the term or to the extent prescribed;
- 15) according to information submitted to the Financial Supervision Authority by the financial supervision authority of a contracting state, the credit institution has violated conditions provided by the legislation of the contracting state or conditions set by the financial supervision authority of the contracting state in conformity to the requirements of subsection 20¹(6) or 20⁴(6) of this Act.
- 16) the credit institution has failed to implement a precept of the Financial Supervision Authority and, as a result, a person who is not in compliance with the requirements provided for in this Act, has been appointed head of a credit institution or is continuing as member of the directing body of the credit institution.
- [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) Prior to deciding on the revocation of authorisation pursuant to subsection (1) of this section, the Financial Supervision Authority may issue a precept to the credit institution and set a term for elimination of the deficiencies which are the basis for the revocation.

(3) The decision on revocation of authorisation shall be delivered to the credit institution without undue delay.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(4) The Financial Supervision Authority shall revoke the identification code specified in subsection 13 (3¹) of this Act and the right to use thereof upon revocation, termination of authorisation or for other good reason.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

§ 18. Publication

(1) The Financial Supervision Authority shall disclose a decision on grant, amendment or revocation of authorisation on its website no later than on the working day following the date of making such decision.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(2) In addition to the provisions of subsection (1) of this section, the Financial Supervision Authority shall publish a notice concerning revocation of authorisation in at least one daily national newspaper.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) If the authorisation has been revoked on the basis of clause 17 (1) 2) of this Act, the Financial Supervision Authority shall disclose the facts of the violation and the data of persons responsible for the violation.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) The Financial Supervision Authority shall disclose the data provided for in subsection (3) of this section with delay or in a depersonalised form if:

- 1) the punishment has been imposed on a natural person the disclosure of whose personal data has been estimated disproportionate compared to the violation of the person;
 - 2) disclosure may endanger the stability of the financial sector or the pending criminal investigation, or
 - 3) disclosure may create unreasonable damage to the credit institution or person related to the violation.
- [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 19. Consequences of termination of authorisation

(1) After the termination of its authorisation, a credit institution shall not conclude the transactions and perform the acts specified in § 6 of this Act and shall terminate all payments to depositors, clients or creditors, unless otherwise provided for in this Act.

(1¹) The prohibition provided for in subsection (1) of this section shall not apply:

- 1) upon termination of the authorisation of a credit institution on the basis specified in clause 16 (3) of this Act;
 - 2) if this is deemed to be necessary considering the circumstances of the dissolution of the credit institution or for ensuring the stability of the financial system and if the Financial Supervision Authority has granted authorisation to a credit institution to continue the performance, in full or in part, of the transactions and acts specified in § 6 of this Act also after the authorisation has expired.
- [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1²) [Repealed - RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(1³) [Repealed - RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(2) Except in the cases specified in clauses 16 1) or 2) of this Act, termination of authorisation results in the dissolution of the credit institution pursuant to the procedure provided for in Chapter 11 of this Act.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 19¹. Bases of activities of credit institution in foreign state

(1) A credit institution founded in Estonia and holding an activity licence issued by the Financial Supervision Authority may provide services specified subsection 6 (1) of this Act in a foreign state by establishing branches or providing cross-border services.

(2) Upon provision of services in a foreign state, a credit institution shall comply with the requirements provided for in this Act, legislation issued on the basis thereof and legislation of the foreign state.

(3) Cross-border services are services of a credit institution which the institution provides in a state where the credit institution or a branch thereof is not registered.

(4) The provisions of subsections 20 (7) and (8), §§ 20¹-20⁵ and § 97¹ of this Act apply to the provision of services by credit institutions of Estonia in another contracting state. The provisions specified in this subsection also apply to the provision of investment services by credit institutions of Estonia in another contracting state. [RT I 2007, 58, 380 - entry into force 19.11.2007]

(5) The provisions of § 20, subsection 20⁴(1) and (7)-(9), and § 97¹ of this Act apply to the provision of services in foreign states not specified in subsection (4) of this section.

(6) If a credit institution wishes to provide investment services and ancillary services in a foreign state through an investment agent, the provisions of Chapter 8 Division 2 of the Securities Market Act concerning investment firms shall be applied thereto.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

§ 20. Foundation of subsidiary credit institutions, branches and representative offices of credit institutions in foreign states

(1) If a credit institution wishes to found a subsidiary credit institution or branch in a foreign state or acquire a holding in a foreign credit institution such that the latter would become a subsidiary thereof, the credit institution shall submit an application for the corresponding authorisation to the Financial Supervision Authority setting out the following data:

- 1) the name of the foreign state;
- 2) the business name and address of the subsidiary credit institution or the address of the branch;
- 3) the last three annual reports of the foreign credit institution in which the credit institution wishes to acquire a qualifying holding;
- 4) the action plan of the subsidiary credit institution or the branch together with a detailed description of the intended activities, a description of the organisational structure, and the relationship with the credit institution being founded;
- 5) data relating to the managers of the subsidiary credit institution or the director of the branch. Such data shall be submitted pursuant to the requirements of subsection 48 (7) of this Act. The director of a branch must meet the requirements established by this Act for chairman of a management board;
- 6) pursuant to the requirements established in § 30 of this Act, data relating to shareholders who have qualifying holdings in the subsidiary credit institution.

(2) The Financial Supervision Authority may demand additional documents or information in order to specify or verify the data specified in subsection (1) of this section;

(3) The Financial Supervision Authority shall inform the foreign financial supervision authority of a submitted application within three months as of the receipt of the application or additional information and documents specified in subsection (2) of this section.

(4) The Financial Supervision Authority may refuse to grant authorisation if:

- 1) the financial situation of the credit institution being founded or acquired or the financial situation of the acquiring credit institution is not adequately sound, or
- 2) the organisational structure of the subsidiary credit institution or branch being founded or acquired is not suitable for the intended activities, or
- 3) the managers of the subsidiary credit institution or the director of the branch being founded or acquired do not meet the requirements of §§ 48, 53, 56 and 57 of this Act, or
- 4) the legislation of the foreign state prevents the exercise of adequate supervision, including supervision on a consolidated basis, or the receipt of information necessary therefor.

(5) A written reasoned decision on the grant of or refusal to grant authorisation shall be sent to the credit institution by the Financial Supervision Authority within three months as of the receipt of the application specified in subsection (1) of this section or the submission of additional data specified in subsection (2) of this section. If the grant of authorisation is refused, the provisions of subsection (3) of this section do not apply.

(5¹) The Financial Supervision Authority shall inform the foreign financial supervision authority of grant of an authorisation and shall co-ordinate the principles of supervision and liability.

(6) A credit institution which has a subsidiary credit institution or a branch in a foreign state is required to notify the Financial Supervision Authority and the financial supervision authority of the host country of all intended alterations in the data specified in clauses (1) 2), 4) or 5) of this section at least one month before such alterations are made.

(6¹) The Financial Supervision Authority may revoke authorisation granted to a credit institution to open a branch in a foreign state if:

- 1) the credit institution or its branch in the foreign state does not meet the requirements provided by legislation with which compliance was necessary to obtain the authorisation;
- 2) the credit institution fails to submit reports on its branch as required;
- 3) the credit institution has submitted misleading information or documents, or incorrect information or falsified documents concerning its branch to the Financial Supervision Authority upon application for authorisation or at another occasion;
- 4) the credit institution has materially or repeatedly violated requirements provided for in legislation of the foreign state which may damage the interests of its clients;
- 5) the credit institution has failed to implement a precept of the Financial Supervision Authority within the term or to the extent prescribed;
- 6) the risks arising from the activities of the branch are significantly greater than risks arising from the activities of the credit institution;
- 7) circumstances provided in subsection (4) of this section become evident;
- 8) the credit institution, a manager of the credit institution or the director of a branch of the credit institution has been punished for an economic offence, official misconduct, offence against property or offence against public trust and information concerning the punishment has not been expunged from the punishment register pursuant to the Punishment Register Act;

(6²) The Financial Supervision Authority shall immediately notify the financial supervision authority of the host country of the branch about the revocation of authorisation specified in subsection (6¹) of this section.

(6³) After becoming aware of revocation of an authorisation for the foundation of a branch, the credit institution shall terminate provision of its services through the branch founded in the foreign state not later than by the due date specified by the Financial Supervision Authority.

(7) A credit institution shall notify the Financial Supervision Authority of the opening, closing or change of address of a representative office of the credit institution in a foreign state at least ten days before such opening, closing or change of address. This information must be submitted in writing and it shall contain the following data:

- 1) the country of location of representative office;
- 2) the business name of the representative office in Estonian and the official language or languages of the country of its location;
- 3) the address of the representative office;
- 4) the telecommunications numbers of the representative office;
- 5) the date of the opening, closing or change of address of the representative office;
- 6) in the case of change of address, the new address of the representative office.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(8) The Financial Supervision Authority shall maintain a list of the subsidiary credit institutions, branches and representative offices of Estonian credit institutions in foreign states.

§ 20¹. Specifications for foundation of branch of credit institution in contracting state

(1) A credit institution which wishes to found a branch in another contracting state shall inform the Financial Supervision Authority of its intention and submit the following information and documents to the Financial Supervision Authority:

- 1) the name of the contracting state where the credit institution wishes to open a branch;
- 2) the action plan of the branch which shall contain data on all the financial services which the branch proposes to offer in the contracting state, and a description of the organisational structure of the branch;
- 3) the address of the branch in the contracting state;

[RT I 2006, 63, 467 - entry into force 01.01.2007]

- 4) data on the managers of the branch. Such data shall be submitted pursuant to the provisions of subsection 48 (7) of this Act.

(2) The documents specified in (1) of this section shall be submitted in Estonian together with an official translation into one or several official languages of the contracting state in which the credit institution wishes to establish a branch.

(3) Based on § 20³ of this Act, the Financial Supervision Authority shall make a decision to forward or refuse to forward the information and documents specified in subsection (1) of this section to the financial supervision

authority of the corresponding contracting state within three months after receipt of all the required information and documents. The Financial Supervision Authority shall promptly inform a credit institution of a decision to forward or refuse to forward the information and documents.

(4) The Financial Supervision Authority may refuse to review the information and documents specified in subsection (1) of this section if:

- 1) the information or documents submitted for forwarding do not comply with the requirements provided for in this Act or legislation established on the basis thereof;
- 2) the information or documents submitted for forwarding are incomplete;
- 3) the documents or information which the Financial Supervision Authority requests for forwarding have not been submitted within the prescribed term.

(5) Upon forwarding the information and documents specified in subsection (1) of this section, the Financial Supervision Authority shall also inform the financial supervision authority of the contracting state of the size of the own funds and capital adequacy of the credit institution.

(6) The credit institution may open a branch in the contracting state after receiving the conditions set by the financial supervision authority of the location of the proposed branch for establishing the branch in such contracting state. If within two months after the receipt of the documents and information specified in subsection (1) of this section, the financial supervision authority of the location of the branch has not established any conditions, the credit institution may open a branch in the contracting state.

(7) A credit institution shall inform the Financial Supervision Authority and the financial supervision authority of the contracting state of the location of the branch office of amendment of the information or documents specified in clauses (1) 2)–4) of this section for at least one month before amendments enter into force.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(8) The Financial Supervision Authority may forbid, by its precept, a credit institution to provide services through a branch opened in another contracting state if:

- 1) the basis for refusal to forward information and documents provided in § 20³ of this Act exists;
- 2) the financial supervision authority of a contracting state has informed the Financial Supervision Authority that a credit institution has committed a violation of the conditions provided for in the legislation of the contracting state or established by the financial supervision authority of the contracting state.

(9) The Financial Supervision Authority shall promptly deliver a decision specified in subsection (8) of this section to the credit institution. The credit institution is required to discontinue, not later than by the deadline given by the Financial Supervision Authority, the provision of its services through the branch opened in the relevant contracting state.

§ 20². [Repealed – RT I 2004, 36, 251 - entry into force 01.05.2004]

§ 20³. Bases for refusal to forward documents and information

The Financial Supervision Authority may make a decision to refuse to forward the information and documents specified in subsection 20¹(1) of this Act if:

- 1) the information or documents submitted upon application do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;
- 2) the financial situation, organisational structure or other resources of the credit institution are inadequate for the provision of services specified in the action plan in a contracting state;
- 3) opening of the branch or implementation of the action plan submitted by the credit institution may damage the interests of its clients, the financial situation or reliable activities of the credit institution;
- 4) a financial supervision authority of a contracting state has no legal basis or possibilities for cooperation with the Financial Supervision Authority due to which the Financial Supervision Authority cannot exercise adequate supervision over the branch located in the contracting state.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 20⁴. Provision of cross-border services

(1) A credit institution which intends to provide cross-border services in a foreign state shall inform the Financial Supervision Authority thereof and shall submit the following information and documents to the Financial Supervision Authority:

- 1) the name of the state in which the credit institution proposes to offer cross-border services;
- 2) a description of the proposed cross-border services including the list specified in subsection 6 (1) of this Act which shall set out the transactions and activities which the credit institution wishes to perform in the foreign state.

(2) If a credit institution intends to provide cross-border services in a contracting state, the documents specified in (1) of this section shall be submitted in Estonian together with an official translation into one or several official languages of the contracting state.

(3) If a credit institution intends to provide cross-border services in a contracting state, the Financial Supervision Authority shall make a decision to forward or refuse to forward the information and documents specified in subsection (1) of this section to the financial supervision authority of the corresponding contracting state within one month after receipt of the information specified in subsection (1) of this section. The Financial Supervision Authority shall promptly inform a credit institution of a decision to forward or refuse to forward the information and documents.

(4) The Financial Supervision Authority may refuse to review the information and documents specified in subsection (1) of this section if they:

- 1) do not meet the requirements provided by this Act or are incomplete;
- 2) have any of the deficiencies specified in clause 1) of this subsection and the additional information or documents required by the Financial Supervision Authority have not been submitted within the prescribed term.

(5) The Financial Supervision Authority may make a decision to refuse to forward the information and documents specified in subsection (1) of this section if:

- 1) the submitted information or documents do not meet the requirements provided by this Act or the information or documents are incorrect, misleading or incomplete;
- 2) the financial situation, organisational structure or other resources of the credit institution are inadequate for the provision of cross-border services;
- 3) the provision of cross-border services is likely to damage the interests of the clients, the financial situation or financial soundness of the credit institution;
- 4) a financial supervision authority of a contracting state has no legal basis or possibilities for cooperation with the Financial Supervision Authority due to which the Financial Supervision Authority cannot exercise adequate supervision over the provision of cross-border services in the contracting state.

(6) After the information and documents specified in subsection (1) of this section have been forwarded to the financial supervision authority of the relevant contracting state, the credit institution may commence provision of cross-border services in the contracting state having regard to the conditions provided for in the legislation of the contracting state and established by the financial supervision authority of the contracting state.

(7) A credit institution is required to inform the Financial Supervision Authority and, in case of provision of cross-border services in a contracting state, also the financial supervision authority of the contracting state of amending the document specified in clause (1) 2) of this section not later than after one month before such amendments enter in force.

(8) The Financial Supervision Authority may prohibit, by a precept, a credit institution to provide cross-border services if:

- 1) the basis for refusal to forward information and documents provided in subsection (5) of this section exists;
- 2) the financial supervision authority of a contracting state has informed the Financial Supervision Authority that a credit institution has committed a violation of the conditions provided for in the legislation of the contracting state or established by the financial supervision authority of the contracting state.

(9) The Financial Supervision Authority shall promptly deliver a decision specified in subsection (8) of this section to the credit institution. The credit institution is required to discontinue, not later than by the deadline given by the Financial Supervision Authority, the provision of the cross-border services in that foreign state.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 20⁵. Branch of financial institution belonging to consolidation group of credit institution and provision of cross-border services in contracting state

(1) The provisions of §§ 20¹-20⁴ and § 97¹ of this Act apply regarding a financial institution of Estonia which is a subsidiary of a credit institution or jointly controlled by two or more credit institutions and the articles of association of which permit the conclusion of transactions and performance of acts specified in clauses 6 (1) 2)-12) of this Act, and which wishes to found a branch and provide cross-border services in a contracting state, unless otherwise provided for in this section.

(2) A parent credit institution of a financial institution specified in subsection (1) of this section which wishes to found a branch in a contracting state or offer cross-border services shall apply for a written confirmation from the Financial Supervision Authority regarding the financial institution and the written confirmation shall indicate that the financial institution meets the following requirements:

- 1) the parent undertaking or undertakings hold an activity licence issued by the Financial Supervision Authority for acting as a credit institution;
- 2) the financial institution concludes the transactions and performs the acts specified in clauses 6 (1) 2)-12) of this Act in a contracting state;
- 3) the parent undertaking or undertakings hold at least 90 per cent of the votes represented by shares or units of the financial institution;
- 4) the parent undertaking or undertakings ensure the prudent management of the financial institution;

5) the parent undertaking or undertakings have stated that they solidarily guarantee performance of the obligations assumed by the financial institution;

6) together with the parent undertaking or all its parent undertakings, the financial institution is subject to supervision on a consolidated basis, in particular regarding the transactions and acts specified in clauses 6 (1) 2)-12) of this Act and concerning limitations on investments, capital adequacy and limitations on concentration of exposures.

(3) In addition to the provisions of subsections 20¹(1) and (2) of this Act, the Financial Supervision Authority shall forward, after provision of a confirmation specified in subsection (2) of this section, the confirmation and information concerning the composition and size of own funds of the financial institution and the total amount of exposures of a parent credit institution or credit institutions to the financial supervision authority of another contracting state in compliance with Article 87 of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) If a financial institution of Estonia no longer meets the requirements provided for in subsection (2) of this section, the Financial Supervision Authority shall inform the financial supervision authority of the other contracting state thereof.

[RT I 2005, 13, 64 - entry into force 18.03.2005]

§ 20⁶. Bases for activities of foreign credit institution

(1) A person who pursuant to the legislation of the home state has the right to receive money from the public for the purposes of depositing or to receive repayable funds in any other manner may, on the basis of the activity licence issued in the home state, conclude the same transactions and perform the same acts in Estonia by establishing branches or providing cross-border services in Estonia. Upon providing financial services in Estonia, a person of a foreign state shall adhere to the requirements established for credit institutions by this Act and on the basis thereof as well as to other requirements arising from Estonian legislation established for operating in Estonia.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(2) The provisions of §§ 21⁴-21⁶, 22 and 97² of this Act apply to a person specified in subsection (1) of this section that is founded in another contracting state and complies with the requirements established regarding credit institutions in Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.06.2013, pp. 338-436).

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) The provisions of §§ 21-21³, 22 and subsections 97²(1)-(3) of this Act apply to a person specified in subsection (1) of this section who does not comply with the requirements provided for in subsection (2) of this section. Such persons may provide services in Estonia only through a branch.

(4) For the purposes of this section, cross-border services are services provided in Estonia by a person who is not or whose branch is not registered in Estonia. The provisions concerning cross-border services apply also if cross-border services are provided through a third party.

(5) If a credit institution of another Contracting State wishes to provide investment services and ancillary services through an investment agent, the provisions of Chapter 8 Division 3 of the Securities Market Act concerning investment firms shall be applied thereto.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

§ 21. Foundation of subsidiary credit institutions or branches of foreign credit institutions in Estonia

(1) A foreign credit institution which wishes to found a subsidiary credit institution in Estonia shall apply for an authorisation specified in § 13 of this Act from the Financial Supervision Authority.

(2) A foreign credit institution which wishes to found a branch in Estonia is required to apply for an authorisation from the Financial Supervision Authority and submit an application to which the following information and documents are appended:

1) the action plan of the branch being founded together with a detailed description of the intended activities, a description of the organisational structure, and the relationship with the credit institution being founded;

2) the address of the branch;

3) data relating to the director of the branch, pursuant to subsection 48 (7) of this Act;

4) the data and documents required by subsection 30 (3) of this Act relating to shareholders who have qualifying holdings in the credit institution founding the branch;

5) the documents prescribed in clauses 386 (2) 1), 3), 4) and 5) of the Commercial Code.

(3) The consent of the financial supervision authority of the home state of the credit institution to the foundation of a subsidiary credit institution or foundation of a branch in Estonia, confirmation that the credit institution holds a valid activity licence, data relating to the amount of own funds and the capital adequacy of the credit institution, and data relating to the deposit guarantee system of the home state shall be submitted to the Financial Supervision Authority.

(3¹) The Financial Supervision Authority shall verify if the deposits of the depositors in a branch of a credit institution are protected pursuant to the deposit guarantee scheme of the home state of the credit institution at least at the level and to the extent provided for in the Guarantee Fund Act.
[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

(4) A foreign credit institution shall submit the information and documents specified in this section which are in a foreign language together with translations into Estonian.

(5) In addition to the provisions of subsection 15 (1) of this Act, the Financial Supervision Authority may refuse to grant an authorisation if:

1) according to the opinion of the Financial Supervision Authority, the financial situation of the foreign credit institution is not adequately sound;

2) the organisational structure of the subsidiary credit institution or branch of the foreign credit institution in Estonia is not suitable for the intended activities;

3) the legislation of the home state of the credit institution does not require or the financial supervision authority of the home state does not exercise adequate supervision, including supervision on a consolidated basis;

4) the financial supervision authority of the foreign state has no legal basis, possibilities or readiness for cooperation with the Financial Supervision Authority.

[RT I 2010, 7, 30 - entry into force 26.02.2010]

5) pursuant to the deposit guarantee scheme of the home state of a foreign credit institution the deposits of depositors in an Estonian branch of the credit institution are not protected at least at the level and to the extent provided for in the Guarantee Fund Act and the foreign credit institution has not committed to joining the Guarantee Fund or obligation to pay contributions.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

(6) A reasoned decision on the grant of or refusal to grant an authorisation shall be made by the Financial Supervision Authority within two months as of the receipt of an application and all the data and documents specified in subsection (2) of this section.

(7) The applicant shall be promptly notified of the decision.

[RT I 2005, 13, 64 - entry into force 18.03.2005]

§ 21¹. [Repealed - RT I 2004, 36, 251 - entry into force 01.05.2004]

§ 21². Processing of application for authorisation for foundation of branch and revocation of authorisation

(1) The provisions of §§ 13-15, 17 and 18 of this Act apply to the processing of applications for authorisation for the foundation of a branch, verification of information, the grant and revocation of authorisation, and the issue and revocation of the identification code of a branch and the right to use thereof, unless otherwise provided for in this section.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(2) [Repealed - RT I 2005, 13, 64 - entry into force 18.03.2005]

(3) The Financial Supervision Authority may revoke an authorisation for the foundation of a branch if circumstances provided for in § 17 of this Act or in subsection 21 (5) of this Act become evident.

(4) The Financial Supervision Authority may refuse to revoke an authorisation for the foundation of a branch if the clients of the branch have claims against the branch or the foreign credit institution.

[RT I 2005, 13, 64 - entry into force 18.03.2005]

§ 21³. Amendment of authorisation for foundation of branch

(1) A foreign credit institution which wishes to provide services in Estonia which are not specified in the action plan submitted upon application for an authorisation for the foundation of a branch shall submit an application for amendment of the authorisation for the foundation of the branch to the Financial Supervision Authority.

(2) In order to amend an authorisation for the foundation of a branch, a foreign credit institution shall submit to the Financial Supervision Authority an application to which the information and documents specified in clauses 21 (2) 1)-3) of this Act are appended.

(3) The provisions of §§ 14-15 of this Act apply to the processing of applications for the amendment of authorisations for the foundation of a branch, verification of information and deciding on amendment of the authorisations.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 21⁴. Specifications for foundation of branch of credit institution of contracting state in Estonia

(1) A credit institution of a contracting state that wishes to found a branch in Estonia for provision of financial services specified in subsection 6 (1) of this Act, provided that the authorisation of the credit institution of the contracting state includes provision of such services, shall inform the Financial Supervision Authority thereof through the financial supervision authority of the contracting state. The following information and documents shall be submitted to the Financial Supervision Authority:

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

1) the action plan of the branch which shall contain data on all the financial services which the branch proposes to offer in Estonia, and a description of the organisational structure of the branch;

2) the address of the branch;

[RT I 2006, 63, 467 - entry into force 01.01.2007]

3) data relating to the managers of the branch, pursuant to the provisions of subsection 48 (7) of this Act;

(2) The Financial Supervision Authority shall promptly inform the financial supervision authority of the contracting state of the receipt of the information and documents specified in subsection (1) of this section. The Financial Supervision Authority may make, where necessary, within two months after receipt of the information specified in subsection (1) of this section, a decision which determines the requirements implemented in public interest which the credit institution must comply with in Estonia. The Financial Supervision Authority shall promptly inform the financial supervision authority of the contracting state of its decision.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) A credit institution of a contracting state may found a branch and commence activities after receiving, through the financial supervision authority of its home country, the decision specified in subsection (2) of this section, or two months after the date on which the Financial Supervision Authority receives the documents and information specified in subsection (1) of this section.

(3¹) On the basis of the application of the credit institution of the contracting state the Financial Supervision Authority shall issue to the branch the identification code specified in subsection 13 (3¹) of this Act and the right to use thereof from the term provided for in subsection (3) of this section. If the period of time remaining between the receipt of the application and the term provided for in subsection (3) of this section is shorter than 30 calendar days, the Financial Supervision Authority may decide on the issue of the identification code and the right to use thereof within 30 calendar days as of the receipt of the corresponding application.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(4) The Financial Supervision Authority shall be informed of changes in the information and documents specified in subsection (1) of this section at least one month in advance. Within one month as of becoming aware of the changes, the Financial Supervision Authority may amend the decision specified in subsection (2) of this section or make the aforementioned decision unless it has been made earlier.

(5) Confirmation from the Financial Supervision Authority concerning receipt of the information and documents specified in subsection (1) of this section and the decision of the Financial Supervision Authority specified in subsection (2) of this section, if it exists, shall be submitted upon entry of a branch in the commercial register. If the Financial Supervision Authority makes a decision specified in subsection (4) of this section, the Authority shall send a copy of the decision to the commercial register.

§ 21⁵. Provision of cross-border services in Estonia by credit institution of contracting state

(1) A credit institution of a contracting state which wishes to provide cross-border services in Estonia shall inform the Financial Supervision Authority thereof through the financial supervision authority of the contracting state and indicate which transactions and acts listed in subsection 6 (1) of this Act the credit institution intends to conclude and perform.

(2) A credit institution of a contracting state may commence the provision of cross-border services in Estonia after the notice specified in subsection (1) of this section has been forwarded to the Financial Supervision Authority.

(3) After receipt of the notice specified in subsection (2) of this section, the Financial Supervision Authority may make a decision in which it determines the conditions according to which the credit institution of the contracting state must provide its services. The Financial Supervision Authority shall promptly inform the credit institution of the contracting state of the decision.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 21⁶. Foundation of branch of financial institution belonging to consolidation group of credit institution of contracting state and provision of cross-border services in Estonia

(1) The provisions of §§ 21⁴, 21⁵, 22 and 97² of this Act apply regarding a financial institution of a contracting state which is a subsidiary of a credit institution or jointly controlled by two or more credit institutions and the articles of association of which permit the conclusion of transactions and performance of acts specified in clauses 6 (1) 2)-12) of this Act, and which wishes to found a branch and provide cross-border services in Estonia, unless otherwise provided for in this section.

(2) The parent credit institution of a financial institution of a contracting state specified in subsection (1) of this section which wishes to found a branch in Estonia or provide cross-border services shall inform the Financial Supervision Authority thereof through the financial supervision authority of the contracting state and shall submit the information and documents specified in subsection 21⁴(1) of this Act concerning the financial institution, information concerning the amount of own funds of the financial institution and the capital adequacy indicator of the credit institution or credit institutions which are parent undertakings on a consolidated basis and a confirmation issued by the financial supervision authority of the contracting state which indicates that the financial institution meets the following requirements:

- 1) the parent undertaking or undertakings are authorised as credit institutions in the contracting state by the law of which the activities of the financial institution is governed;
- 2) the financial institution concludes the transactions and performs and acts specified in clauses 6 (1) 2)-12) of this Act in Estonia;
- 3) the parent undertaking or undertakings hold more than 90 per cent of the votes represented by shares or units of the financial institution;
- 4) the parent undertaking or undertakings ensure the prudent management of the financial institution;
- 5) the parent undertaking or undertakings have stated that they solidarily guarantee performance of the obligations assumed by the financial institution;
- 6) together with the parent undertaking or all its parent undertakings, the financial institution is subject to supervision on a consolidated basis, in particular regarding the transactions and acts specified in clauses 6 (1) 2)-12) of this Act and concerning limitations on investments, capital adequacy and limitations on concentration of exposures.

[RT I 2005, 13, 64 - entry into force 18.03.2005]

§ 22. Representative offices of foreign credit institutions

(1) A foreign credit institution which wishes to open a representative office in Estonia shall submit the corresponding information and the following data and documents to the Financial Supervision Authority:

- 1) confirmation from the financial supervision authority of the home country that the credit institution holds valid authorisation;
- 2) the activities programme of the representative office;
- 3) an authorisation document certifying the authorisation of the representative;
- 4) a document concerning the registration of the credit institution in the home country (an extract from the commercial register or a transcript of the registration certificate);
- 5) the articles of association of the credit institution;
- 6) the seat, address and telecommunications numbers of the representative office.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(2) The documents specified in subsection (1) of this section shall be submitted to the Financial Supervision Authority together with a translation into Estonian done by a sworn translator or a notarised translation.

[RT I, 23.12.2013, 1 - entry into force 01.01.2014]

(3) The Financial Supervision Authority shall maintain a list of foreign credit institutions which shall include the following data:

- 1) the name of the representative office in Estonian;
- 2) the address of the representative office;
- 3) the telecommunications data of the representative office;
- 4) the name of the representative.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

Chapter 3 BANKS AS CREDIT INSTITUTIONS

Division 1

Foundation of Banks and Requirements for Articles of Association

§ 23. Restrictions on foundation of banks

A bank shall not be founded by public share subscription.

§ 24. Payment for shares of banks

(1) Upon the foundation of a bank, shares shall be paid for in money. This restriction does not apply to the case specified in subsection 65 (2) of this Act.

(2) Monetary contributions shall be paid to the bank being founded into an account opened in Eesti Pank or an account opened in an Estonian credit institution.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 25. Transactions concluded before entry in commercial register

Before the entry of a bank in the commercial register, the founders of the bank may, in the name of the bank being founded, only conclude transactions which are directed at the creation of the organisational structure of the bank being founded and the acquisition or acquisition for use of necessary technical equipment or security systems or assets necessary to conclude transactions for which the bank has been authorised.

§ 26. Requirements for articles of association of banks

The articles of association of a bank shall, in addition to data provided for in the Commercial Code, set out the procedure for formation of the structural units specified in this Act and for provision of the competence thereof, and the reporting principles of the structural units.

§ 27. Amendment of articles of association

(1) Before entry of amendments to the articles of association in the commercial register, a credit institution is required to submit all such amendments to the Financial Supervision Authority in order to obtain the consent thereof.

(2) In order to obtain consent for amendments to the articles of association, a credit institution is required to submit an application and the following documents to the Financial Supervision Authority within ten days as of the adoption of the resolution by the general meeting of shareholders:

- 1) the resolution of the general meeting on amendment of the articles of association;
- 2) the minutes of the general meeting;
- 3) the new text of the articles of association.

(3) The Financial Supervision Authority shall refuse to grant consent to amendments to articles of association if such amendments do not comply with current legislation.

(4) The Financial Supervision Authority shall make a reasoned decision on the grant of or refusal to grant consent not later than within two weeks as of the submission of the application.

(5) The consent of the Financial Supervision Authority to amendments to the articles of association of a credit institution shall be annexed to the application submitted to the commercial register.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

Division 2 Shares of Banks

§ 28. Shares of banks and registrar of share register

(1) A bank may have only registered shares.

(2) Pursuant to the procedure provided by law and with the consent of the Financial Supervision Authority, a bank may issue non-voting shares which grant the pre-emptive right to receive dividends and to participate in the distribution of the remaining assets of the bank upon dissolution (preferred shares).

(3) The sum of the nominal values or estimated values of preferred shares shall not be greater than one-tenth of the share capital.

[RT I 2010, 20, 103 - entry into force 01.07.2010]

(4) A bank may issue registered convertible bonds, the sum of the nominal values of which shall not be greater than one-tenth of the share capital.

(5) The shares of a bank shall be freely transferable. The pre-emptive right of a shareholder provided for in subsection 229 (2) of the Commercial Code does not apply to the transfer of shares of a bank.

(6) [Repealed - RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 29. Holding

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) The holding in the share capital of a company is direct or indirect.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) A holding is deemed to be direct if the holding belongs to a person personally, or a person personally exercises the rights related thereto.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) A holding is deemed to be indirect if:

1) it is held or exercised by a person together with one or several controlled companies;

2) it is held or exercised by one or several companies controlled by a person;

3) it is held or exercised by a person or a company controlled thereby based on an agreement with a third person;

4) the voting right arising therefrom is deemed to belong to the person.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(4) [Repealed - RT I 2009, 37, 250 - entry into force 10.07.2009]

(5) Determination of the qualifying holding and the company controlled shall be based on Article 4(1) (35)-(38) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) The provisions of §§ 29–33 of this Act shall also be applied to an association bank.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

§ 29¹. Requirements for persons acquiring and having a qualifying holding

A qualifying holding in a bank may be acquired, held and increased and control over a bank may be achieved, held and increased by any person conforming to the following requirements (hereinafter in this section person):

1) who has an impeccable business reputation and is acting in the course of the acquisition according to the principles of sound and prudent management of a bank;

2) after the holding has been acquired or increased, is electing, naming or assigning the director of the bank to be only such a person who conforms to the requirements specified in § 48 of this Act;

3) whose financial situation is adequately strong and sustainable to ensure the reliable and regular operation of the bank, and in the case of a legal person its annual reports, if such exist, are required to allow appropriate assessment of its financial situation;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

4) who is able to ensure that the bank is capable of following the prudential requirements specified in this Act, in case of a legal person primarily the requirement that the consolidation group a part of which the bank becomes has a structure that allows the exercise of adequate supervision, exchange of information and cooperation between financial supervision authorities;

5) with respect to whom there is no justified suspicion that the acquisition, possession or increase of the holding or the control over the bank is connected to money laundering or terrorist financing or any attempts thereof or increases such risks.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

§ 30. Notification of acquisition of holding and information to be submitted

(1) A person who intends to acquire a qualifying holding in a bank directly or indirectly or to increase a holding so that the proportion of the share capital or votes in the bank held by the person exceeds 20, 30 or 50 per cent or so that the bank would become a company controlled by the person as a result of the transaction (hereinafter acquirer) is required to inform the Financial Supervision Authority of such intention beforehand and submit the information and documents specified in subsection (3) of this section.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(2) The provisions of this Division also apply in cases where a person acquires, due to any other event or as a result of another transaction, a qualifying holding in a bank or increases a holding so that the proportion of the

share capital or votes in the bank held by the person exceeds 20, 30 or 50 per cent or so that the bank becomes a company controlled by the person as a result of such event or transaction. In such case, the person is required to notify the Financial Supervision Authority promptly after the bank becomes a company controlled by the person or after becoming aware of the acquisition of qualifying holding or increase of holding in the bank.
[RT I 2009, 37, 250 - entry into force 10.07.2009]

(2¹) The Financial Supervision Authority shall inform the acquirer in writing within two working days about the receipt of the notice specified in subsection (1) or (2) of this section or about the receipt of additional information and documents specified in subsection (4) of this section and about the possible end-date of the time-limits of proceedings provided for in § 30¹ of this Act.
[RT I 2009, 37, 250 - entry into force 10.07.2009]

(3) The Financial Supervision Authority shall be informed of the name of the company in which the qualifying holding is being acquired or increased or is made a company controlled by the acquirer as well as the size of the acquired holding in this company and the following information and documents shall be submitted to the Financial Supervision Authority:

1) the description of the acquired company that includes an extract of the share register, information of the type and number of votes of the shares being acquired by and belonging to the acquirer and other information where necessary;

2) in a case of a natural person the curriculum vitae of the acquirer that includes among others the acquirer's name, place of residence, current educational, work and service history and the personal identification code or in the absence thereof the date of birth;

2¹) data regarding the holdings of the acquirer who is a natural person in other legal persons or pools of assets and data regarding the persons over which the acquirer has control;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

3) if the acquirer or manager of the pool of assets is a legal person, the acquirer's name, seat, registry code, an authenticated copy of the registry certificate and the articles of association, if they exist, data regarding the holding in other legal persons or pools of assets and data regarding persons over which the acquirer has control;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

4) if the acquirer is a legal person, the list of its owners or members, which shall set out, for each owner or member, the number of shares or the size of the share belonging to him or her in all legal persons or pools of assets and the number of votes granted by such shares, and data regarding the persons who have control over the owners or members of the acquirer that is a legal person;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

5) if the acquirer is a legal person, the list of its members of the management board and supervisory board which shall set out, for each member, his or her given name and surname, personal identification code or, in the absence thereof, date of birth, history of education, employment and services, and documents which certify the trustworthiness, experience, competence and impeccable business reputation of such persons;

6) the confirmation that a stakeholder or a person becoming the director of the bank as a result of acquisition is in compliance with the requirements provided for in this Act or the legislation issued on the basis thereof and has not been punished for an offence or economic, official misdemeanour, offence against property or public trust, whereby in the case of a citizen or pool of assets of a foreign state a certificate from the punishment register or an equal document issued by a competent court or administrative institution of his or her home state is considered acceptable on condition that no more than three months has passed from the issue thereof;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

7) description of the acquirer's engagement in enterprise and the description of the economic and non-economic interests of the persons connected to the acquirer;

8) confirmation that there are no circumstances related to the person specified in exclude his or her right to be a manager of a bank pursuant to the law;

9) the last three annual reports of the acquirer if they exist. If more than nine months have passed since the end of the previous financial year, an audited interim report for the first six months of the financial year shall be submitted. The sworn auditor's report shall be added to the reports if preparation of the report is prescribed by legislation;

[RT I 2010, 9, 41 - entry into force 08.03.2010]

10) if possible, the ratings and public reports necessary for assessing the financial situation of the acquirer and the financial situation of companies related to him or her if the acquirer is a natural person, or credit ratings issued to the acquirer and its consolidation group if the acquirer is a legal person;

11) if the acquirer is a company belonging to a consolidation group, a description of the structure of the group, data relating to the sizes of the holdings of the companies belonging to the group, and the last three annual reports of the consolidation group together with the sworn auditor's reports;

[RT I 2010, 9, 41 - entry into force 08.03.2010]

12) if the acquirer is a natural person, documents certifying the financial status of the person for the last three years;

13) information and documents concerning the sources of the monetary and non-monetary funds for which the acquirer intends to acquire or increase the qualifying holding or to gain control;

14) the circumstances related to the acquisition of the holding pursuant to § 29 of this Act and §§ 10 and 72¹ of the Securities Market Act;

15) the size of the qualifying holding after acquiring the holding, and the circumstances pertaining to acquisition thereof pursuant to § 29 of this Act and § 10 and 72¹ of the Securities Market Act;

16) in the case of becoming a company which is controlling the bank, a business plan and other circumstances related to gaining and executing of control pursuant to § 29 of this Act and § 10 of the Securities Market Act; [RT I, 31.12.2016, 1 – entry into force 10.01.2017]

17) in the case of the bank not becoming a controlled company, an overview of the strategy to be implemented in the bank; [RT I 2009, 37, 250 - entry into force 10.07.2009]

(3¹) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3²) Information and documents shall be submitted to the Financial Supervision Authority in Estonian. With consent of the Financial Supervision Authority, the information and documents may also be submitted in some other language;

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(4) The Financial Supervision Authority may request in written form additional information or documents in order to specify or verify the information or documents specified in subsection (3) of this section. Such requests shall specify what additional information is to be submitted to the Financial Supervision Authority.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(5) The Financial Supervision Authority has the right to waive, in full or in part, the request for the information or documents specified in subsection (3) of this section.

[RT I 2004, 86, 852 - entry into force 01.01.2005]

(6) A third country credit institution, insurance undertaking, investment firm, management company, investment fund, e-money institution or another person subject to financial supervision which wishes to acquire a qualifying holding shall, in addition to the information and documents specified in subsection (3) of this section, submit a certificate issued by the supervisory authority of the third country which proves that the person of the third country holds valid authorisation and complies with the requirements in force, to the Financial Supervision Authority.

[RT I 2004, 86, 852 - entry into force 01.01.2005]

§ 30¹. Procedure and time-limits of proceedings

(1) The Financial Supervision Authority shall assess the conformity of the acquirer to the requirements specified in § 291 of this Act and shall decide to refuse or allow the acquisition of holding not later than within 60 working days (hereinafter the period of proceedings) after the Financial Supervision Authority has issued the notice confirming the reception of the information and documents necessary for assessment as provided in subsection 30 (2¹) of this Act.

(1¹) The Financial Supervision Authority may refuse to review the notice if the notice or the documents appended thereto have significant deficiencies, for instance, the data specified in subsection 30 (3) of this Act are not set out in the notice.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) The Financial Supervision Authority has the right to request the additional information and documents specified in subsection 30 (4) of this Act not later than within 50 working days after the beginning of the period of proceedings.

(3) The period of proceedings shall be suspended for the duration of the time from the first request of the Financial Supervision Authority for the additional information and documents specified in subsection (2) of this section to the moment of receiving the requested additional information and documents from the acquirer. Such suspension shall not exceed 20 working days.

(4) The period of proceedings shall not be suspended for any subsequent requests of additional information and documents.

(5) If no financial supervision is exercised over the acquirer or if financial supervision over acquirer is exercised by a financial supervision authority of a third country, the Financial Supervision Authority may extend the suspension of the period of proceedings specified in subsection (3) of this section up to 30 working days.

(6) Upon assessment of an acquisition or increase of a qualifying holding or turning a bank into a company controlled by an acquirer, the Financial Supervision Authority shall cooperate with a financial supervision authority of a contracting state if the acquirer is one of the following persons:

1) an insurance undertaking, credit institution, management company, investment fund, investment firm or other person under financial supervision, having authorisation issued by the contract state;

2) a parent company of an insurance undertaking, credit institution, management company, investment fund, investment firm or other person under financial supervision, having authorisation issued by the contract state; or

3) a person controlling a company which is an insurance undertaking, credit institution, management company, investment fund, investment firm or other person under financial supervision, having authorisation issued by the contract state.

(7) Regarding the cooperation specified in subsection (5) of this section, the Financial Supervision Authority shall consult with other financial supervision authorities. The Financial Supervision Authority shall immediately forward to other financial supervision authorities all data relevant to the assessment of the acquisition or increase of a qualifying holding or turning a bank into a company controlled by the acquirer.

(8) If multiple persons simultaneously intend to acquire a qualifying holding, then the Financial Supervision Authority shall treat them equally in equal circumstances.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

§ 31. Requirements for acquisition of holdings, bases for prohibition of acquisition of holdings and decision on acquisition of holdings

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(1) The Financial Supervision Authority has the right to establish a term for the acquirer during which the acquirer has the right to acquire or increase a qualifying holding, or to turn the bank into a company controlled thereby. The Financial Supervision Authority may extend the prescribed term but the term shall not exceed twelve months. During such term, the acquirer is required to promptly inform the Financial Supervision Authority of a decision to perform or not to perform the transaction to acquire or increase a qualifying holding, or to turn the bank into a company controlled thereby.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(2) If the Financial Supervision Authority does not issue a precept to prohibit the acquisition or increase of the qualifying holding or turning the bank into a controlled company pursuant to § 30¹ of this Act and subsection (3) of this section, the qualifying holding may be acquired, increased or the bank turned into a controlled company.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(3) The Financial Supervision Authority may prohibit, by a precept, the acquisition or increase of a qualifying holding or turning a bank into a controlled company if:

- 1) the acquirer is not in compliance with the requirements provided for in § 29¹ of this Act;
- 2) the acquirer has failed to submit on due date to the Financial Supervision Authority the information or documents prescribed in this Act or required by the Financial Supervision Authority on the basis of this Act;
- 3) information or documents submitted to the Financial Supervision Authority are not in compliance with the requirements provided by legislation, or the information or documents are incorrect, misleading or incomplete, or on the basis of the information or documents submitted the justified suspicion of the Financial Supervision Authority that the acquisition is improper or that the acquisition does not conform to the requirements provided for in this Act cannot be eliminated;
- 4) the bank would be turned into a company controlled by a person residing or located in a third state and there is no adequate supervision over such person in the home state or country of location thereof or the financial supervision authority of the third state has no legal basis or possibilities to cooperate with the Financial Supervision Authority.

5) a person not specified to the Financial Supervision Authority has control over the acquirer.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) The Financial Supervision Authority shall issue its decision allowing or precept prohibiting the acquisition of a qualifying holding to the acquirer not later than within two working days after making the relevant decision and before the end of the period of proceedings. If financial supervision over the acquirer is exercised by a financial supervision authority of a contract state, then the decision must also specify its assessment regarding the acquisition or increase of the qualifying holding or turning the bank into a controlled company.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(5) If circumstances specified in subsection (3) of this section become evident after the acquisition or increase of the qualifying holding or turning the bank into a controlled company, then the Financial Supervision Authority may issue a precept deeming the acquisition of the qualifying holding or turning the bank into a controlled company to be in violation of this Act.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(6) Upon existence of the circumstances provided in subsection (3) or (5) of this section, the Financial Supervision Authority has the right to specifically prohibit or restrict, by a precept, the acquirer or a person who has a qualifying holding in a bank or who is the person controlling a bank to exercise voting rights or other rights guaranteeing control in the bank. The Financial Supervision Authority may issue such precept regardless

of having issued the precept provided in subsection (3) or (5) of this section. The Financial Supervision Authority may publish the precept on its website and the acquirer may request the publishing of the precept.
[RT I 2009, 37, 250 - entry into force 10.07.2009]

(7) Upon issue of the precept specified in subsection (5) or (6) of this section, the Financial Supervision Authority shall inform the financial supervision authority of the relevant contracting state if the credit institution, management company, investment fund, investment firm, insurance undertaking, e-money institution, other person subject to financial supervision registered in a contracting state or a person belonging to the same consolidation group with an aforementioned person is the acquirer or a person who has a qualifying holding in a bank or who is the person controlling a bank.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

(8) A bank, the registrar of its share register and other persons organising the exercise of voting rights are also required to comply with the precepts issued by the Financial Supervision Authority specified in subsections (3), (5) and (6) of this section.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 32. Consequences of illegal acquisition of holdings

(1) As a result of a transaction by which a qualifying holding is acquired or increased, the person shall not acquire the voting rights determined by the shares and the votes represented by the shares shall not be included in the quorum of the general meeting if:

- 1) the transaction is contrary to a precept issued by the Financial Supervision Authority;
- 2) the Financial Supervision Authority has issued a precept specified in subsection 31 (5) or (6) of this Act;
- 3) the Financial Supervision Authority has not been informed of the transaction pursuant to the procedure provided for in § 30 of this Act;
- 4) the transaction is performed after the expiry of the date specified in subsection 31 (1) or before the acquisition of the qualifying holding was permitted on the basis of this Act.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(2) No right shall arise for a person to turn a bank into a company controlled by the person as a result of a transaction in relation to which any of the circumstances specified in subsection (1) of this section exists.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) If voting rights representing a holding acquired or increased by a transaction, in the case of which any of the circumstances specified in subsection (1) of this section exists, are included in the quorum of the general meeting and influence the adoption of a resolution of the general meeting, the resolution of the general meeting is void. A court may declare the resolution of the general meeting invalid on the basis of a petition of the Financial Supervision Authority, a shareholder or a member of the management board or supervisory board of the company, if the petition is submitted within three months as of the adoption of the resolution of the general meeting.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(4) In the case of exercise of the rights guaranteeing control which arise from a transaction whereby the bank was to be turned into a company controlled by the person and in respect of which any of the circumstances specified in subsection (1) of this section exists, a court may declare the exercise of such rights invalid on the basis of a petition of the Financial Supervision Inspectorate, a shareholder or member of the management board or supervisory board of the company, if the petition is submitted within three months as of the time of exercise of the rights.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

§ 33. Giving notification of changes in holding and related circumstances

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(1) If a person intends to transfer shares in an amount which would result in the person losing a qualifying holding in a bank or if the person reduces the holding thereof such that it falls below one of the limits specified in subsection 30 (1) of this Act or foregoes control over the bank, the person is required to promptly inform the Financial Supervision Authority of such intention and indicate the number of shares which the person owns and transfers and holds after the transaction.

[RT I 2009, 37, 250 - entry into force 10.07.2009]

(2) The provisions of subsection (1) of this section also apply if a person loses control over a bank or qualifying holding in a bank as a result of any other event or transaction or if the holding of the person is reduced such that it falls below one of the limits specified in subsection 30 (1) of this Act. In such case, the person is required to inform the Financial Supervision Authority promptly after becoming aware of the loss of qualifying holding or control or the reduction of holding.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) Upon becoming aware of transactions specified in subsections 30 (1) and (2) of this Act or subsections (1) or (2) of this section, a bank is required to promptly inform the Financial Supervision Authority thereof.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(4) Together with its annual report, a bank shall submit to the Financial Supervision Authority information concerning persons who, as of the end of the financial year, have qualifying holding in the bank and shall set out the size of holding owned by each person and the circumstances relating thereto pursuant to § 29 of this Act and §§ 10 and 72¹ of the Securities Market Act.
[RT I 2009, 37, 250 - entry into force 10.07.2009]

(5) A person that has a qualifying holding shall promptly inform the Financial Supervision Authority about encumbering its shares with the right of third party, thereby setting out the information connected to the pledge, including the names, personal identification codes, or in the absence of them, the dates of birth of the pledgor and the pledgee and the number of shares pledged for the benefit of the pledgee. The information requirement shall not be applied if the encumbrance of the shares is registered in the register kept by the Estonian Central Securities Depository.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 34. Acquisition or taking as security of own shares

(1) A bank may acquire its own shares and take its own shares as security in the conduct of ordinary business provided that the shares of the bank are traded on a regulated market.

(2) The provisions of clause 283 (2) 1) of the Commercial Code do not apply to a bank taking its own shares as security.
[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(3) The grant of a loan for the purchase of own shares is prohibited.
[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 35. Share and initial capital of bank

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) Upon foundation of a bank as a new company the paid in share capital of the bank shall be equivalent to at least 5 million euros. Only the amounts actually paid in may be reflected as share capital.

(2) In the case of an operating company the initial capital of the bank shall make up at least five million euros. The initial capital consists of the capital and reserves specified in Article 26 (1) (a)-(e) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 36. Methods of increase of share capital

(1) Upon a resolution of the general meeting, the share capital of a bank may be increased by supplementary monetary contributions or, without supplementary contributions, out of the retained profits or share premium accounts of the bank (bonus issue) or by the conversion of convertible bonds to shares or by the settlement of a financial claim arising out of a subordinated debt agreement and the issue price of the shares.

(2) Upon a resolution of the general meeting, shares may be paid for by a non-monetary contribution upon an increase of the share capital of the bank in the course of a merger of banks.

(3) Prior written consent from the Financial Supervision Authority is required to increase the share capital of a bank by the conversion of convertible bonds to shares or by the settlement of a claim arising out of a subordinated debt agreement and the issue price of the shares.

(3¹) The Financial Supervision Authority may refuse to grant consent if increasing the share capital of a bank by the method specified in subsection (3) of this section would damage the interests of depositors, other clients and creditors of the credit institution.

(4) The provisions of § 349 of the Commercial Code also apply to a bank; however, the supervisory board shall not increase the share capital by more than 10 per cent of the share capital which existed at the time the supervisory board acquired the right to increase the share capital.

(5) A bank is required to notify the Financial Supervision Authority of the conditions of an intended increase in share capital at least seven days before the adoption of the corresponding resolution.
[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 37. Reduction of share capital

(1) Share capital may be reduced in order to cover a loss (simplified reduction of share capital) unless otherwise provided for by this Act. After the adoption of a resolution to reduce share capital, the Tier 1 capital of the bank shall be no less than that provided for in subsection 35 (2) of this Act.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) Prior written consent from the Financial Supervision Authority is required to reduce share capital for other purposes.

(3) The Financial Supervision Authority may refuse to grant the consent provided for in subsection (2) of this section if the reduction of share capital would damage the solvency of the bank or the interests of depositors, clients or other creditors of the bank in other way.

(4) § 358 and the term provided for in the first sentence of subsection 359 (1), and subsection 359 (2) of the Commercial Code do not apply to banks. The management board shall publish a notice concerning the new amount of share capital in a national daily newspaper within fifteen days as of adoption of the resolution on the reduction of the share capital.
[RT I 2005, 13, 64 - entry into force 18.03.2005]

Chapter 4

ASSOCIATION BANKS AS CREDIT INSTITUTIONS

§ 38. Application of Acts

The provisions of law regarding savings and loan associations apply to the foundation, activities and dissolution of association banks, unless otherwise provided by this Act.

§ 39. Foundation of association banks

(1) An association bank must be founded by at least fifty persons.
[RT I 2001, 102, 672 - entry into force 01.01.2002]

(2) The provisions of § 25 of this Act apply to the foundation of association banks.

(3) The provisions of § 5, clause 7 (2) 1) and clause 10 (1) 1) of the Savings and Loan Associations Act do not apply to the foundation of association banks.
[RT I 2010, 34, 182 - entry into force 01.07.2010]

§ 40. [Repealed - RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 41. Foundation of association bank by merger of savings and loan associations

(1) An association bank may be founded by a merger of savings and loan associations pursuant to the procedure prescribed in the Savings and Loan Associations Act.

(2) The founders of an association bank are the merging savings and loan associations.

(3) Upon the foundation of an association bank by a merger of savings and loan associations, all merging savings and loan associations shall be audited by at least one common auditor who meets the requirements specified in subsection 94 (1) of this Act.

(4) The auditor shall prepare a report concerning the audit of the merger agreement and merger report and provide the auditor's opinion of whether the share capital and net own funds of the association bank being founded are in compliance with the requirements of this Act and legislation issued on the basis thereof.
[RT I 2010, 34, 182 - entry into force 01.07.2010]

§ 42. Requirements for articles of association of association banks

(1) In addition to that provided for in the Savings and Loan Associations Act, the articles of association of an association bank shall set out:

- 1) a description of the organisational structure of the association bank and the procedure for the formation of structural units;
- 2) the competence of the directing bodies;
- 3) the body which establishes the procedure for making transactions with the members of the association bank and filing a claim against the member;

[RT I 2010, 34, 182 - entry into force 01.07.2010]

- 4) the reporting principles;
 - 5) the work procedure of the revision committee.
- [RT I 2001, 102, 672 - entry into force 01.01.2002]

(2) [Repealed - RT I 2001, 102, 672 - entry into force 01.01.2002]

(3) [Repealed - RT I 2001, 102, 672 - entry into force 01.01.2002]

(4) The provisions of § 27 of this Act apply to association banks.

§ 42¹. Members of association banks

(1) § 17 of the Savings and Loan Associations Act does not apply to members of the association bank.

(2) The management board of the association bank shall decide the acceptance of a person as a member of the association bank upon request by the person, unless this competence has been given to the supervisory board with the articles of association.

(3) If a member leaves or is excluded from an association, the member has the right to the refund of the paid contribution if the member does not have any unperformed and enforceable obligations to the association bank.

(4) The contribution shall be paid out no later than within three years as of the termination of membership unless the articles of association prescribe a shorter term. A new term for paying out the contribution may be assigned with a resolution of the general meeting if, after making the payout, the own funds of the association bank are inadequate for the prudential ratios provided for in this Act and for the compliance with other requirements prescribed in this Act and the legislation issued on the basis thereof.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) The provisions of subsection (4) of this section also apply to the successors of the deceased member unless the successors become members of the association.

(6) Provisions of §§ 33-37 of the Commercial Associations Act do not apply to the members of the association bank.
[RT I 2010, 34, 182 - entry into force 01.07.2010]

§ 43. [Repealed - RT I 2010, 34, 182 - entry into force 01.07.2010]

§ 44. Share and initial capital of association banks

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]
Provisions of § 35 of this Act regarding share and initial capital shall be applied to share and initial capital of an association bank.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 45. Legal reserve of association bank

(1) In order to guarantee the obligations of an association bank, a legal reserve shall be formed in the amount of at least one-tenth of the share capital unless the articles of association prescribe a higher level.

(2) During each financial year, at least one-twentieth of net profit shall be entered in the legal reserve. If the legal reserve reaches the amount prescribed in the articles of association, the increase of legal reserve from net profit shall be terminated.

§ 46. Distribution of profit of association bank

(1) The profit of an association bank shall be calculated pursuant to accounting rules and distributed according to the resolution of the general meeting.

(2) Upon a resolution of the general meeting, the shares of profit prescribed for payment to members in the profit distribution proposal submitted by the management board shall not be increased.

(3) Payments shall not be made to members if the annual report of the association bank approved at the end of the previous financial year shows that the amount of own funds of the association bank does not comply with the provisions of this Act.

§ 47. Covering of loss of association bank

The provisions of § 26 of the Savings and Loan Associations Act do not apply to association banks.

Chapter 5

MANAGEMENT AND ORGANISATIONAL STRUCTURE OF CREDIT INSTITUTIONS, REQUIREMENTS FOR MEMBERS OF DIRECTING BODIES AND MEMBERS OF STAFF OF CREDIT INSTITUTIONS

§ 48. General requirements to managers and employees

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) The members of the supervisory board and management board of a credit institution are deemed to be the managers of the credit institution.

(2) Only the persons who have the necessary expertise, skills, experience, education, professional qualifications and an impeccable business reputation may be elected or appointed managers of a credit institution, parent financial holding company of a credit institution and mixed financial holding company. As a result of election or appointment of managers the composition of the members of the supervisory board and management board shall be adequately diverse for management of a credit institution, at least taking account of the requirements specified in the first sentence of this section, and in compliance with the principles of diversity in the composition of the governing bodies established in the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) A person whose earlier activities have caused the bankruptcy or compulsory liquidation or revocation of the activity licence of a company, or from whom the right to engage in economic activity has been taken away pursuant to law, or whose earlier activities as a manager of a company have shown that he or she is not capable of organising the management of a company such that the interests of the shareholders, members, creditors and clients of the company are adequately protected, or whose earlier activities have shown that he or she is not suitable to manage a company for other good reasons shall not be elected or appointed manager of a credit institution or a member of the supervisory board or management board of the parent company of a credit institution or a company belonging to the same consolidation group as the parent company.

(4) The managers and members of staff of a credit institution are required to act with the prudence and competence expected of them and according to the requirements for their posts in line with the interests of the credit institution and the clients thereof. The knowledge, skills and experience of the managers of credit institutions and employees engaged in granting loans shall be in compliance with the provisions of subsections 40 (2) – (5) of the Creditors and Credit Intermediaries Act upon granting a loan to consumers.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(4¹) A procedure shall be established in the credit institution for the guidance of managers appointed to the office and improvement of their knowledge in order to comply with the requirements for the post.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) The managers and members of staff of a credit institution are required to give priority to the economic interests of the credit institution and the clients thereof over their own personal economic interests.

(5¹) The organisational structure and organisation of management of a credit institution shall ensure sound and prudent management of the credit institution, including separation of functions in the organisation and prevention of the conflict of interests.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

(6) A credit institution is required to notify the Financial Supervision Authority of the intention to elect or appoint the managers of the credit institution or of the intention to extend their term of office, and to submit the information and documents specified in subsection (7) of this section to the Financial Supervision Authority at least ten days before deciding such issues. This term shall not be applied if the prior submission of documents is not possible for good reasons.

[RT I 2010, 7, 30 - entry into force 26.02.2010]

(6¹) A credit institution shall notify the Financial Supervision Authority of the resignation or initiation of removal of the managers before the expiry of their term of office at least ten days before deciding such issues. This term shall not be applied if the prior notification is not possible for good reasons.

[RT I 2010, 7, 30 - entry into force 26.02.2010]

(7) In order to elect or appoint a manager of a credit institution, the written consent of the person to be elected or appointed is necessary. A person shall submit his or her written consent together with an overview of his or her education, work experience, engagement in enterprise and punishments entered in the punishment register, and confirmation concerning the absence of facts provided for in this Act which preclude the right to be a manager of a credit institution. Eesti Pank shall establish the procedure for the submission of data and documents to confirm that a person is trustworthy and suitable and that he or she meets the requirements.

§ 49. Prohibition on competition and declaration of economic interests

(1) A member of the supervisory board of a credit institution shall not be a member of the supervisory board, management board or revision committee or an auditor of another credit institution unless the credit institutions are companies belonging to the same consolidation group or the credit institutions cannot be deemed to be in competition as they operate in different markets.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1¹) A member of the supervisory board of a credit institution may be a member of the supervisory board or management board of another company if it is in compliance with the obligations and competence of the manager, proportional to the nature, extent and level of complexity of the operation of the credit institution, and if the member of the supervisory board holds no more than:

- 1) one management board member post and two supervisory board member posts, or
- 2) four supervisory board member positions.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1²) The following posts shall be considered one post for the purposes of restrictions specified in subsection (1¹) of this section:

- 1) posts of managers within the same consolidation group;
- 2) posts of managers in the credit institutions that are members of the respective protection scheme that is in compliance with requirements specified in Regulation (EU) No 575/2013 Article 113 (7) of the European Parliament and of the Council on prudential requirements;
- 3) posts of managers in companies in which the credit institution has a qualifying holding.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1³) The restrictions specified in subsection (1¹) of this section shall not extend to a member of the supervisory board in the following cases:

- 1) appointment to a post of a manager for representing the contracting state;
- 2) appointment or election to a post in an association, organization or another entity which is not established for the purpose of making profit through economic activities;
- 3) The Financial Supervision Authority has granted authorisation for assumption of a post of a member of the supervisory board.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1⁴) The provisions of subsections 48 (6) and (7) of this Act shall be applied to the application of the authorisation specified in clause (1³) 3) of this section. The Financial Supervision Authority shall notify the credit institution and the member of the supervisory board and the European Banking Authority of the grant of authorisation or refusal of the grant thereof.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) The following persons shall not be members of the management board of a credit institution:

- 1) a member of the management board or supervisory board of another company unless the company belongs to the same consolidation group as the credit institution;
- 2) a procurator, auditor, member of the revision committee, or controller of another company.

(3) A member of the management board of a credit institution shall not be party to employment contracts entered into with other persons. A member of the management board of a credit institution is prohibited from entering into contracts with other persons if, pursuant to such contracts, the duties of the member include investment, preparation or intermediation of loan and investment projects, or other similar activities. The provisions of this subsection shall not be applied to pedagogical or research activity.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

(4) The managers of a credit institution are required to declare their economic interests and conflicts of interest under the conditions and pursuant to the procedure established by Eesti Pank.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

(5) The employees of a credit institution specified in subsection 571 (3) of this Act are required to submit the declaration of economic interests in accordance with the internal provisions established in the credit institution. At the request of the management board of the credit institution the employees not specified in the first sentence of this subsection are also required to submit the declaration if it is proportional to the nature, extent and level of complexity of the operation of the credit institution and necessary based on the organisational structure of the credit institution, services provided and organisation of risk management.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

§ 50. Removal of manager of credit institution

(1) The Financial Supervision Authority has the right to issue a precept to demand the removal of a manager of a credit institution if:

- 1) according to the opinion of the Financial Supervision Authority, the person does not meet the requirements established for the managers of credit institutions, or
- 2) the person has submitted misleading or inaccurate information or falsified documents in connection with his or her election or appointment;
- 3) the activities of the person in managing the credit institution have shown that he or she is not capable of organising the management of the credit institution so that the interests of the depositors, other clients and creditors of the credit institution are adequately protected.

(2) [Repealed - RT I, 03.03.2015, 1 – entry into force 27.02.2015 – The judgment of the Constitutional Review Chamber of the Supreme Court declares subsection 50 (2) of the Credit Institutions Act to be in conflict with the Constitution and invalid]

(3) A court may, at the request of the Financial Supervision Authority or the management board, the supervisory board or a shareholder of the credit institution, appoint a new member to replace a member removed from the supervisory board. The authority of a court-appointed member of the supervisory board shall continue until the election of a new member of the supervisory board by the general meeting.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 51. General meeting

(1) The management board shall call a special general meeting if:

- 1) the amount of own funds of the credit institution is lower than required pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council and the credit institution has failed to increase its own funds to the required level during the term specified in the precept of the Financial Supervision Authority, or

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

- 2) in other cases provided for by law;

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(1¹) The provisions of subsection (1) of this section shall not be applied if the Financial Supervision Authority implements the crisis resolution measures or rights provided for in the Financial Crisis Prevention and Resolution Act.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(2) In the case specified in clause (1) 1) of this section, the general meeting shall decide on:

- 1) the increase of share capital or implementation of other measures to bring the own funds of the credit institution into accordance with the requirements of this Act, or
- 2) the merger or division of the credit institution, or
- 3) the dissolution of the credit institution or submission of the bankruptcy application;

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(2¹) If the management board does not call the extraordinary general meeting within ten days as of the receipt of the demand of the shareholders, the supervisory board or auditor or of the precept of the Financial Supervision Authority or the management board does not call the meeting in other cases provided for by law, the shareholders, supervisory board, auditor as well as the Financial Supervision Authority have the right to convene the general meeting themselves.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(3) The provisions of clause 292 (1) 1), subsection 292 (3) and § 301 of the Commercial Code do not apply to banks, and the provisions of § 40 of the Savings and Loan Associations Act do not apply to association banks.

(4) The management board, or shareholders whose shares represent at least one-tenth of the share capital, or one-tenth of the members, or the Financial Supervision Authority may demand the inclusion of a certain issue on the agenda. A demand shall be submitted before the notice summoning the general meeting is sent to shareholders or members or is published.

(5) The management board shall send a notice of the general meeting to the Financial Supervision Authority pursuant to the same procedure as to the shareholders or members of the credit institution.

[RT I 2005, 13, 64 - entry into force 18.03.2005]

§ 52. Supervisory board of credit institution

(1) The supervisory board of a credit institution is a directing body of the credit institution which plans the activities of the credit institution, gives instructions to the management board for organisation of the management of the credit institution, and supervises the activities of the credit institution and the activities of the management board in managing the credit institution.

(2) The members of the supervisory board shall ensure verification that the activities of the credit institution and the management board and members of staff thereof are in accordance with legislation and the provisions of internal rules and other rules established by the directing bodies of the credit institution.

(3) The members of the supervisory board must comprehend the risks involved in the activities of the credit institution and shall ensure that the management board of the credit institution identify risks and monitor and control the extent thereof.

(4) The supervisory board is competent and required to:

1) approve the strategy and general principles of the activities of the credit institution;
2) approve the general principles of risk management of the credit institution;
2¹) approve the principles of remuneration of the members of the management board and members of staff of the credit institution provided for in subsection 571 (1) of this Act and the evaluation of the implementation thereof.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

3) approve the principles of the organisational structure of the credit institution;
4) approve the general principles of monitoring of the activities of the credit institution;
5) approve the statutes of the internal audit unit;
6) elect and remove the chairman and members of the management board of the credit institution;
7) appoint and remove from office the head of the internal audit unit of the credit institution and, on the proposal of the head of the internal audit unit, appoint and remove from office members of staff of the internal audit unit;
8) approve the budget and the investment plan of the credit institution;
9) decide on the foundation or closure of branches in foreign states;
10) approve the general principles of the activities and the competence of the credit committee;
11) decide on the conclusion of transactions which are beyond the scope of the everyday economic activities of the credit institution;

12) decide on the conclusion of transactions with members of the management board, and appoint the representative of the credit institution in such transactions;

13) file claims against members of the management board, and appoint the representative of the credit institution in such claims;

13 1) approve the financial recovery plan prepared on the basis of the Financial Crisis Prevention and Resolution Act;

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

14) decide on other matters placed in the competence of the supervisory board by the articles of association.

(4¹) The provisions provided for in clauses (4) 1)–4) and 10) of this section shall be reviewed regularly and where necessary updated.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

(5) The provisions of subsection 317 (1) of the Commercial Code do not apply to credit institutions.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 53. Members of supervisory board

(1) The supervisory board shall have five members unless the articles of association prescribe a greater number of members.

(2) In addition to persons provided for in subsection 48 (3) of this Act, members of the management board of the credit institution or other persons authorised to operate in the name of the credit institution, or members of staff exercising internal control, members of the revision committee, auditors of the credit institution and bankrupts shall not be members of the supervisory board. The articles of association may prescribe other persons who shall not be members of the supervisory board.

§ 54. Meeting of supervisory board

(1) Meetings of the board shall be held when necessary but not less frequently than once every three months.

(2) A meeting of the supervisory board shall be called if this is demanded by a member of the supervisory board, a member of the management board, an auditor, the head of the internal audit unit, the chairman of the revision committee, shareholders whose shares represent at least one-tenth of the share capital, one-tenth of the members, or other persons prescribed by law. An application for calling a meeting of the supervisory board shall set out the matters to be resolved.

(3) An auditor, the head of the internal audit unit or the chairman of the revision committee are required to participate in a meeting of the supervisory board if this is demanded by at least one member of the supervisory board.

§ 55. Management board of credit institution

(1) The management board of a credit institution is a directing body of the credit institution, which directs the day-to-day activities thereof pursuant to the strategies and general principles of activities approved by the supervisory board, and monitors the day-to-day activities of the members of staff of the credit institution.

(2) Among other obligations, the management board is required to:

1) develop a business plan for implementation of the strategy approved by the supervisory board;
2) establish and regularly review risk taking, management, monitoring and risk management principles and procedures which comprise both the current and also potential risks, including risks from macroeconomic environment;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

2¹) determine the risk tolerance of the credit institution for each relevant business line and unit;

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

2²) establish the principles and procedures for the trading portfolio management of the credit institution;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

2³) approve and submit to the Financial Supervision Authority the financial recovery plan prepared on the basis of the Financial Crisis Prevention and Resolution Act and be apprised of the relevant information on a regular basis;

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

3) identify and assess regularly all risks involved in the activities of the credit institution and ensure the monitoring and control of the extent of such risks;

3¹) ensure the existence of adequate financial instruments and members of staff or third persons for management of all the significant risks of the credit institution and for evaluation of the assets related to these risks, and for implementation of external credit quality assessments and internal models;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

4) develop the organisational structure of the credit institution on the basis of the principles provided for in the articles of association and approve the structure of the credit institution;

5) develop and implement systems for monitoring the activities of the credit institution, ensure adherence to such systems, assess the adequacy thereof regularly and improve them if necessary pursuant to the principles established by the supervisory board;

6) ensure that all members of staff of the credit institution are aware of the provisions of legislation relating to their duties of employment and of the principles provided for in the documents approved by the directing bodies of the credit institution;

7) organise the effective functioning of the internal control system of the credit institution and ensure monitoring of the compliance of the activities of the credit institution and the managers and members of staff thereof with legislation and the documents approved by the directing bodies of the credit institution and with the principles of sound banking management;

8) ensure the existence and functioning of systems to guarantee that information necessary for members of staff of the credit institution to perform their duties is communicated thereto in a timely manner;

9) ensure the safety and regular monitoring of information technology systems used by the credit institution and systems used for the safekeeping of assets of clients;

10) inform the supervisory board to the extent and pursuant to the procedure established thereby of all discovered violations of legislation or of internal rules or other rules established by the directing bodies of the credit institution.

11) monitor that adequate separation of functions is guaranteed in all the activities of the credit institutions, and avoid the creation of conflict of interests.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

12) arrange the disclosure of the data by the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2¹) The management board shall guarantee that the organisational structure of the credit institution is transparent, the areas of responsibility are clearly delineated and procedures for the identifying, measurement, management, constant monitoring and reporting of risks have been established and that such procedures are proportional to the nature, extent and level of complexity of the operation of the credit institution. In addition to the provisions of subsection (2) of this section, the management board has the following additional obligations in connection with risk management and risk assessment:

1) in the case internal rating methods of credit risk are used, to approve of the general criteria for determination of ratings and for assessment of credit risk parameters;

2) in the case the standard approach to operational risk is used, approve of the general principles of mapping business lines;

3) in the case a method based on an advanced measurement approach to operational risk is used, to approve of the description and general principles of functioning of the models;

4) in the case the internal ratings based approach to credit risk is used, to ensure the conforming functioning of the rating system of the credit institution and regularly apprise of reports on the process of determining ratings which among other shall describe the profile of credit risk by rating class, changes in ratings, evaluation of the parameters of credit risks by rating class, areas of the rating system in need of improvement and elimination of deficiencies established before, and shall compare the actual indicators of credit risk parameters with the estimated credit risk parameters and results of stress tests;

5) ensure the conforming functioning of the organisation of the management of the operational risk of the credit institution and to regularly appraise of the corresponding information.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

6) ensure the conforming functioning of the organisation of the liquidity risk management of the credit institution, including approval of the business continuity plan specified in subsection 82¹(10) of this Act and to regularly appraise of the corresponding information.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(3) The management board shall present an overview of the activities and economic situation of the credit institution to the supervisory board at least once every three months.

(4) The management board shall immediately inform the members of the supervisory board of any deterioration in the economic situation of the credit institution, danger of such deterioration or deviation from prudential ratios.

§ 56. Members of management board

(1) The management board shall consist of three members unless the articles of association prescribe a greater number of members.

(2) A member of the management board shall have higher education and at least three years' professional experience.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) In addition to persons provided for in subsection 48 (3) of this Act, members of the supervisory board, members of staff exercising internal control, members of the revision committee, controllers, auditors and bankrupts shall not be members of the management board of a credit institution. The articles of association may prescribe other persons who shall not be members of the management board.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 57. Increased requirements for chairman of management board of credit institution

In addition to the requirements provided for in this Act for members of the management board of a credit institution, the chairman of the management board of a credit institution shall have at least five years' practical experience in the financial field in a management capacity.

§ 57¹. Remuneration of management board members and members of staff of credit institution

(1) The bases and principles of determining the remuneration and other office related benefits of management board members and members of staff of the credit institution, including severance payments, pension benefits and other benefits (hereinafter principles of remuneration) shall:

- 1) be clear, transparent and in compliance with prudent and efficient risk management principles;
- 2) take into consideration the business strategy and values of the credit institution in view of the economic performance of the credit institutions and the legitimate interests of the depositors and other clients;
- 3) take into consideration the long-term objectives of the credit institution in view of its ability to cope with the changes in the external environment.

(1¹) Remuneration principles shall determine the bases which clearly distinguish the basic wage paid to a member of the management board or member of staff and remuneration on economic performance and transactions, as well as remuneration for additional work (hereinafter performance pay). The basis for determining the basic wage is, above all, the professional experience of a person and the duties of the member of the management board or member of staff according to the contract.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1²) Remuneration principles shall include measures to avoid a conflict of interests, thereby the remuneration of a member of the management board or employee responsible for the assessment of the solvency of a consumer in a credit institution shall not depend only on the number of the approved credit applications, proportion or the number of the credit agreements entered into.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(1³) If a credit institution provides consulting services upon the granting or intermediating of a loan, the remuneration principles shall not restrict the possibilities of an employee related to consulting service to act in the interests of the consumer and the remuneration of the employee may not be mainly based on the number of credit agreements entered into or the volume of the action plan for provision of service.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(2) The credit institution shall comply in full or partially with the requirements for remuneration provided for in subsections (1)-(1³) of this section and subsections 57²(2)-(2²), (4) and (5) and §§ 57³ and 57⁴ of this Act if implementation of the requirements is proportional taking into account the nature, extent and level of complexity of their activity.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(3) The members of staff of the credit institution for the purposes of §§ 57²-57⁴ of this Act are members of staff whose:

- 1) official duties are performance of the management or control functions of the credit institution;
- 2) official duties involve taking risks that materially influence the risk profile of the credit institution, including risk managers or conformity check performers, or
- 3) the total annual remuneration is at the equal level with the remuneration of the management board members of the credit institution.

(4) The fees payable to the members of the management board of the credit institution are also deemed as remuneration in this Act.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

§ 57². Payment of performance pays in credit institution

(1) The bases for determining the performance pay shall be objective and reasoned, taking account of the results of long-term work of a member of the management board or member of staff, risks of the credit institution and the sustainability of operation and predetermine the period of time of long-term work for which the performance pay is paid.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) The following shall be taken into account upon determination and payment of the performance pay:

- 1) the proportion of the basic remuneration and performance pay shall be in reasonable correspondence to the duties of the management board member or staff member and the performance pay may not exceed the basic remuneration unless otherwise provided for in this Act;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

- 2) the basic remuneration shall make up an adequately large part of the pay which makes it possible not to determine or pay out the performance pay, if necessary.

- 3) personal performance of the member of the management board or staff, taking account of monetary as well as other criteria arising from internal rules and procedures;

- 4) personal performance of a member of the management board or staff and the performance of the business unit in combination with the indicators of the whole credit institution;

- 5) the effect that payment for performance has on the level of own funds and liquidity of the credit institution and the related existent and potential risks.

(2¹) By the resolution of the general meeting of the credit institution the proportion of the performance pay of a member of the management board or staff member may make up to 200% of the basic remuneration if adoption of the resolution and notification thereof is in compliance with the following conditions:

- 1) justification has been added to the draft resolution of the general meeting explaining the necessity and extent of increasing the proportion of the performance pay, including the number of persons to whom the increase of the proportion of the performance pay shall be applied, the duties of the persons and the expected impact of the resolution to increase the proportion of the performance pay on the performance of the requirement for maintaining the level of own funds;

- 2) at least 66% of the votes represented at the general meeting are given in favour of the resolution of the general meeting;

- 3) decision of the increase of the proportion of the performance pay is included on the agenda of the general meeting and information thereof has been forwarded to the shareholders or members by the notice of calling the general meeting;

- 4) the credit institution shall immediately notify the Financial Supervision Authority of the reasons specified in clause 1) of this subsection, including, of the planned larger proportion of the performance pay, and shall be capable of proving that the larger proportion of the performance pay is not in conflict with the obligations of the credit institution, including the obligations related to own funds arising from this Act and Regulation (EU) No.575/2013 of the European Parliament and of the Council;

- 5) the credit institution shall notify immediately the Financial Supervision Authority of the resolutions of the general meeting, including any approved larger proportion of the performance pay.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2²) Upon adoption of the resolution at the general meeting to increase the proportion of the performance pay pursuant to subsection (2¹) of this section, the shareholder or member of the credit institution, with regard to whom the increase of the proportion of the performance pay is decided, shall not participate in voting.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2³) The provisions of subsection 293 (3) of the Commercial Code shall not apply to taking the decision on increasing the proportion of the performance pay, specified in subsection (2¹) of this section, on the agenda pursuant to clause 3) of the same subsection.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2⁴) The Financial Supervision Authority shall analyse the implementation of the requirements for the proportion of the basic remuneration and performance pay, based on the data submitted on the basis of subsection (2¹) of this section, and the respective practice in different credit institutions and submit this information to the European Banking Authority.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) Payment of the performance pay in a fixed sum may only be prescribed in advance in the contract of the member of the management board or a contract of employment for the first year of assumption of office or commencement of work if the level of own funds is in compliance with the established requirements.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) At least 50 per cent of the performance pay shall be made up of a balanced set of the shares of the credit institution, share options or other similar rights that are related to acquisition of shares or, if they exist, other securities for the purposes of Articles 52 or 63 of Regulation (EU) No 575/2013 of the European Parliament and of the Council, or other securities which are possible to change into Tier 1 capital for the purposes of Regulation (EU) No 575/2013 of the European Parliament and of the Council and are in compliance with the credit quality of the credit institution and are suitable for performance pay.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) The substantial portion of the performance pay shall be no less than 40 per cent of the performance pay. The economic cycle and business risks of the credit institution, duties of the members of the management board and staff members who receive performance-related pay and risks related to payment of performance pay shall be taken account of upon payment of the substantial portion of the performance pay (hereinafter in this section deferred portion of the performance pay). Payment of the performance pay shall be allocated in balance over the time period of three to five years. If the proportion the performance pay in the total remuneration is substantial, the deferred portion of the performance pay shall be at least 60 per cent of the performance pay. The deferred portion of the performance pay may also be paid out in a lump sum at the end of a three-years or longer period of time.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) The principles for determination of the performance pay specified in subsection (1) and clauses (2) 3)-5) of this section shall also be applied to severance payments connected to termination of a contract of the member of the management board or a contract of employment.

(7) The contract of a member of the management board or a contract of employment of a credit institution shall prescribe the right of the credit institution to reduce the payable performance pay, suspend the payment of the performance pay or demand return of the paid performance pay in part or in full, taking account of the conditions provided in this Act. A credit institution may apply the right mentioned above if:

- 1) the general economic performance of the credit institution has deteriorated to a significant extent as compared to the previous period;
- 2) a manager or staff member of a credit institution fails to fulfill the performance criteria any longer or is not in compliance with the requirements for manager or member of staff of the credit institution provided for in this Act;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

- 3) the credit institution does not meet the prudential ratios or the risks of the credit institution are not adequately covered with own funds, or

- 4) determination of the performance pay was based on information which was inaccurate or incorrect to a material extent.

(8) The limitation period of a claim arising from performance pay is three years from the date when the payment for performance to a member of the management board or staff of the credit institution was decided.

(9) In cases specified in clauses (7) 1)-4) of this section the credit institution is required to change the principles of remuneration and keep additional own funds for covering risks, if necessary, in order to improve the situation and reduce risks.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

§ 57³. Specifications and supplementary conditions for payment of remuneration

(1) Members of the management board and members of staff of the credit institution are prohibited to conclude liability insurance contracts or introduce other similar measures which reduce the occurrence of the results that are the objective of the principles of remuneration.

(2) If the state or legal person governed by public law has given financial instruments or guarantees to the credit institution for maintenance or recovery of the liquidity or solvency of the credit institution it is required to:

- 1) restrict payment of the performance pay to a percentage rate of the revenue from the main activity, minus the relevant expenditure of the main activities starting from which payment of the performance pay is not in compliance with the adequate maintenance of the level of own funds and conditions for repayment of financial instruments or guarantees;
 - 2) demand that credit institutions restructure the principles of payment and wages, including performance pay, in such a manner that would be in compliance with the reliable risk management and long-term improvement of the economic standing of the credit institution, including, where necessary, setting restrictions to the remuneration of the managers of the credit institution.
 - 3) preclude payment of performance pay to the managers of the credit institution unless it is allowed under the conditions for giving financial instruments or guarantees;
- [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) Provided that a supplementary procedure for payment of pension benefits in addition to the provisions of the Funded Pensions Act is prescribed in the credit institution, the payments of the pension shall be made upon creation of the right for pension of a member of the management board or employee in the proportion and instruments provided in subsection 57²(4) of this Act and apply the period of time of at least five years for payment of the pension.

(4) If the contract of a member of the management board or the employment of an employee with the credit institution is terminated before his right for pension has been created, the credit institution shall retain the pension contributions made on behalf of the person for five years as instruments specified in subsection 572 (4) of this Act.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

§ 57⁴. Remuneration committee

(1) A remuneration committee is established in a credit institution from the members of the supervisory board with the function to evaluate the implementation of the principles of remuneration in the credit institution and the effect of the decisions related to remuneration on meeting the requirements set to risk management, own funds and liquidity. The remuneration committee:

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

- 1) supervises the remuneration of the members of the management board and members of staff;
 - 2) at least once a year evaluates the implementation of the principles of remuneration and if necessary makes a proposal for updating the principles of remuneration;
 - 3) prepares the draft resolutions on remuneration for the supervisory board of the credit institution.
- [RT I, 24.03.2011, 1 - entry into force 03.04.2011]

(2) A credit institution does not have to form a remuneration committee if the remuneration committee has been formed by the parent company of its credit institutions and the activities of the remuneration committee include the whole consolidation group.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

(2¹) The remuneration committee shall be based in its activities on the long-term interests of the shareholders or members and clients of the credit institution and public interest.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) The exact procedure of the remuneration committee shall be determined in the internal rules and procedures of the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 58. Credit committee

(1) The credit committee shall be formed pursuant to the procedure prescribed in the articles of association of the credit institution and shall have at least five members, including the chairman of the management board of the credit institution who shall not be the chairman of the credit committee nor chair the sessions of the credit committee in the absence of the chairman. At least one-half of the members of the credit committee of an association bank shall be members or representatives of members of the association bank.

(2) Loans which exceed the limits established by the supervisory board of a bank shall be granted or renewed on the basis of a specific prior decision of the credit committee. In association banks, loans shall be granted and renewed pursuant to the procedure prescribed in the articles of association.

(3) Before deciding on the grant or renewal of loans, the committee shall review all documents and other information submitted to apply for a loan and, on the basis thereof, adopt a position as to the solvency and financial soundness of the loan applicant and the existence and adequacy of collateral offered by the applicant. The positions of the members of the credit institution shall be recorded in the minutes of the session.

(4) Sessions of the credit committee shall be closed. A session of the credit committee has a quorum if more than one-half of the members of the committee participate. The grant of loans shall be decided by an open vote by name with a majority of votes in favor. Members of the credit committee do not have the right to abstain

from voting or to remain undecided. The chairman of the committee shall have the deciding vote upon an equal division of votes.

(5) Minutes shall be taken of sessions of the credit committee. All members of the committee who participate in the session shall sign the minutes. A dissenting opinion of a member of the committee shall be recorded in the minutes and confirmed by his or her signature.

(6) The credit committee is not required to substantiate a refusal to grant a loan.

§ 58¹. Risk management function

(1) A credit institution is required to provide for a risk management function if it is proportional to the nature, extent and level of complexity of the activities of the credit institution. In the absence of the risk management function the credit institution is required to prove that the risk management policy of the credit institution and the procedure of the implementation thereof are in compliance with the requirements provided for in this section and they are being implemented continuously and efficiently.

(2) The risk management function shall ensure that all the risks of the credit institution are identified, appropriately managed and reflected in the reports. The risk management function must be organisationally independent and separated from the function of the activities related to taking risks.

(3) The risk management function shall participate in the determination of risk management principles of the credit institution and adoption of material risk management decisions. The risk management function shall have a complete understanding of all the risks of the credit institution, as well as have the rights and working conditions necessary for fulfilling the duties of the risk manager.

(4) The supervisory board of the credit institution shall appoint a person responsible for carrying out risk management (hereinafter head of risk management) from among the members of the management board or members of staff and dismiss him or her. The head of risk management may not be engaged in other fields of activity of the credit institution, except when it is proportional to the nature, extent and level of complexity of the credit institution and avoids conflict of interests.

(5) The head of risk management shall submit reports to the supervisory board of the credit institution and, where necessary, notify the supervisory board of the risks which may have a significant effect on the activities of the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 59. Internal control system

(1) A credit institution or a company belonging to the consolidation group of a credit institution must have a constantly functioning internal control system which shall be proportionate to the nature, extent and level of complexity of their activity, and which shall ensure the performance of the functions of risk management, adherence to the good practices of management of the association and internal audit.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(2) The internal control system of a credit institution shall cover all levels of management and operation of the credit institution in order to ensure the effective operation of the credit institution, the reliability of financial reporting and compliance with law, other legislation, documents approved by the directing bodies of the credit institution and the principles of sound banking management, and the adoption of resolutions based on reliable and relevant information.

(3) An independent internal audit unit shall be formed as part of the internal control system of a credit institution and the internal audit unit shall monitor the activities of the whole credit institution. The remuneration of the internal audit unit shall be based on attainment of the objectives of control action and shall not be dependent upon the performance of the fields of activities of the economic activity controlled.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

(4) The internal audit unit shall assess the ordinary business of the credit institution and the suitability and adequacy of the internal rules and rules of procedure for the activities of the credit institution, regularly monitor compliance with the requirements, rules of procedure, limitations and other rules established by the supervisory board or the management board, and monitor compliance with precepts issued by the Financial Supervision Authority.

(4¹) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4²) The internal audit unit or another equivalent independent party must inspect and evaluate, at least once a year, the conformity of the functioning of the management of the operational risk and, if the standard approach

to operational risk is used, regularly check the conformity of the process of mapping the business lines to this Act and legislation issued on the basis thereof.
[RT I 2006, 63, 467 - entry into force 01.01.2007]

(4³) The internal audit unit must inspect and evaluate, at least once a year, the conformity of the principles of remuneration of the members of management board and members of staff to the requirements provided in this Act except in a case where a remuneration committee has been formed in a credit institution.
[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

(5) The internal audit unit shall analyse the deficiencies discovered in the activities of the credit institution and the members of staff thereof, cases of failure to perform duties and excess of authority, make proposals for the elimination of deficiencies and for measures to prevent errors, prepare reviews of the activities of the unit on a regular basis and submit the reviews to the supervisory board and management board of the credit institution pursuant to the procedure prescribed in the articles of association of the credit institution.

(6) In an association bank, the duties provided for in subsections (4) and (5) of this section shall be performed by the revision committee, which also has the rights provided for in § 61 of this Act.

§ 60. Requirements for members of staff of internal audit unit and members of revision committee

(1) A person with an impeccable business reputation, higher education and the necessary expertise and experience to manage the work of the internal audit unit may be the head of the internal audit unit and chairman of the revision committee of a credit institution, and the provisions of subsection 48 (6) of this Act shall apply with regard to the person. The head of the internal audit unit of a credit institution shall be applied the requirements for a certified internal auditor and the legal bases for the activities thereof provided for in the Auditors' Activities Act.

[RT I 2010, 9, 41 - entry into force 01.01.2015 (entry into force amended RT I, 23.12.2013, 4)]

(2) Members of staff of the internal audit unit and members of the revision committee of a credit institution must be natural persons with active legal capacity, impeccable business reputation and the education, experience and professional qualifications necessary for the work of the internal audit unit.

(3) The members of staff of the internal audit unit shall be appointed to and removed from office on the basis of a resolution of the supervisory board of the credit institution. The members of the revision committee shall be elected and removed by the general meeting.

(4) The number of members of staff of the internal audit unit and the number of members of the revision committee shall be adequate for the performance of the duties assigned thereto.

(5) The members of staff of the internal audit unit and members of the revision committee are required to maintain the confidentiality of information that becomes known to them in the course of their activities. This requirement does not apply to information that is submitted to the Financial Supervision Authority or the management board or supervisory board of the credit institution pursuant to the procedure provided by law, the articles of association of the credit institution or the statutes of the internal audit unit.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 61. Rights of internal audit unit

(1) The internal audit unit shall operate pursuant to the procedure provided for in the statutes approved by the supervisory board of the credit institution.

(2) The members of staff of the internal audit unit have the right to examine all documents of the credit institution, monitor the work of the credit institution at each stage without restrictions, and participate in the meetings of the management board or the committees formed on the basis of the articles of association of the credit institution.

(3) The internal audit unit has the right to demand written explanations from the members of staff of the credit institution concerning deficiencies and errors discovered in their work, and the elimination of such deficiencies.

(4) The internal audit unit shall cooperate with the Financial Supervision Authority.
[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 62. Audit Committee, Risk Committee and Nomination Committee

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) The Audit Committee shall be formed in a credit institution for monitoring the activities of the management board. If this is proportional to the nature, extent and level of complexity of the operation of the credit institution, the Risk Committee and Nomination Committee shall be formed in the credit institution additionally. The credit institution is not required to form the Risk committee or Nomination committee if the Risk Committee or Nomination Committee has been formed by its parent credit institution and the activities of this committee cover the whole consolidation group.

(2) The committees specified in subsection (1) of this section shall be formed from the members of the supervisory board unless otherwise provided for in this section. The competence, rights and principles of activity of the committees referred to above shall be determined by the supervisory board of the credit institution.

(3) Other persons appointed by the supervisory Board may be members of the Audit Committee instead the members of the supervisory board, except the members of the management board and staff members of the credit institution.

(4) The competence of the Risk Committee includes:

- 1) consulting the supervisory board and the management board in the field of risk management principles and risk tolerance;
- 2) supervision over the implementation of risk management principles by the management board in accordance with the guidance of the supervisory board;
- 3) checking of how the business model and risk management principles are taken into consideration in the fees established to clients and in the case of deficiencies submission of a remedy plan to the supervisory board
- 4) checking whether the principles of remuneration are taken into consideration in calculation of risk, capital, liquidity and the likelihood and timing of earnings.

(5) Members of the Risk Committee are required to have the necessary knowledge, skills and experience to understand and monitor the principles of risk management and risk tolerance of the credit institution.

(6) If this is proportional to the nature, extent and level of complexity of the operation of the credit institution, the Audit Committee may perform the duties of the Risk Committee. In such case the members of the Audit Committee are required to have the knowledge, skills and experience essential for the performance of the duties of the Risk Committee.

(7) The duties of the Nomination Committee are:

- 1) submission of the candidates for the member of the management board, description of their duties and term of office to the supervisory board;
- 2) setting the target level for representation of the underrepresented gender in the management board, and preparation of the policy for how to increase the representation of the underrepresented gender in order to reach the target level set, and the publishing of the data with regard to the target level, policy and the implementation thereof, specified in this clause, pursuant to Regulation (EU) of the European Parliament and of the council No.575/2013 Article 435 (2) (c);
- 3) evaluation of the composition, structure and activities of the management board for at least once a year and, where necessary, making amendment proposals;
- 4) assessment of the knowledge, skills and experience of individual members of the management body and of the management body collectively at least once annually and reporting to the supervisory board accordingly;
- 5) development and regular assessment of the policy of diversity in the composition of the management bodies valid in credit institutions and the procedure for the selection of the management board and, where necessary, making amendment proposals.

(8) Upon nomination of the candidates for member of the management board to the supervisory board the Nomination Committee is required to ensure the balance between the knowledge, skills and experience of the candidates for member of management board and the implementation of the principles of diversity in the composition of the management bodies established in credit institutions.

(9) The Nomination Committee shall monitor and, as far as possible, ensure that the decision-making process of the management board would not be unduly influenced by one person or interests of a small group of persons, which is not in compliance with the interests of the credit institution as a whole.

(10) The Nomination Committee is entitled to use an external evaluator upon the performance of its duties.

(11) The provisions of this section shall not be applied to association banks.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 63. Internal rules and rules of procedure of credit institutions

(1) A credit institution shall establish internal rules and rules of procedure, which are adequate and proportional to the nature, extent and level of complexity of the operation of the credit institution, in order to regulate the activities of the managers and members of staff of the credit institution. The internal rules and rules of procedure shall ensure the compliance with legislation regulating the activities of the credit institution and with the resolutions of the directing bodies of the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) Among other matters, the internal rules and rules of procedure of a credit institution shall set out:

1) the procedure for prevention of conflicts between the interests of the credit institution and the personal economic interests of the managers and members of staff of the credit institution;
2) the procedure for exchange of information and documents within the credit institution;
3) the procedure for conclusion of transactions and acts at the expense of the credit institution and in the name of and at the expense of the clients, including assessment of the solvency of the consumer for the grant of credit to the consumer, provision of information to the consumer and the procedure for assessment of the property being collateral for the credit agreement, as well as the procedure for the provision of consulting services and consumer disputes settlement;

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

3¹) the procedure of making transactions and acts with the mixed-activity holding undertaking and another subsidiary of such parent undertaking and the internal control procedures for management of risks arising from transactions and actions and submission of reports.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

4) relationships of subordination, the procedure and delegation of rights for submission of reports, providing the separation of functions upon assumption of obligations in the name of the credit institution, making of payments, recording of transactions for accounting and reporting purposes and assessment of risks involved in transactions;

4¹) the procedure for outsourcing of operations of a credit institution;

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

5) the procedure for the functioning of the internal control system;

5¹) the principles of remuneration of the members of the management board and staff of a credit institution, including the bases for payment for the performance and measures to manage and avoid conflicts of interests related to remuneration and the procedure for monitoring the compliance to the principles;

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

6) internal rules of procedure for imposition of international sanctions established on the basis of the International Sanctions Act and the code of conduct and the internal audit rules to monitor compliance with the code of conduct provided in subsection 14 (1) of the Money Laundering and Terrorist Financing Prevention Act.

[RT I, 17.11.2017, 2 - entry into force 27.11.2017]

(3) A person acting in the name of a credit institution shall not represent the credit institution in transactions or legal disputes with a third party with regard to whom the person acting in the name of the credit institution or a person with an economic interest equivalent to that of such person has personal economic interests.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(4) The provisions of § 46 of the Creditors and Credit Intermediaries Act shall be applied to the outsourcing to a third party of operations related to the grant of a loan to a consumer by a credit institution.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(5) A credit institution which intends to provide consulting services for the purposes of § 7 of the Creditors and Credit Intermediaries Act shall prior notify the Financial Supervision Authority thereof.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

§ 63¹. Process for ensuring capital adequacy

(1) All the significant risks of a credit institution, including material market risks, with regard to which the requirements for own funds are not applied, shall be adequately covered by internal capital.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) A credit institution must have reliable, effective and all-inclusive strategies and corresponding procedures in order to continuously maintain an adequate level and structure of own funds, and an adequate division of the own funds between structural units and activities based on the level of the risks assumed by the credit institution or of potential risks.

(3) The corresponding strategies and procedures must be regularly updated in order to guarantee that they continue to be proportionate to the nature, extent and level of complexity of the operation of the credit institution.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

Chapter 6 MERGER AND DIVISION OF CREDIT INSTITUTIONS

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 64. Specifications for merger, division and transformation of credit institutions

(1) The transformation of credit institutions is prohibited.

(2) The division of credit institutions shall be effected pursuant to the procedure provided for in the Commercial Code, taking into consideration the specifications provided for in this Chapter.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(3) The merger of credit institutions shall be effected pursuant to the procedure provided for in the Commercial Code, taking into consideration the specifications provided for in this Chapter.

(4) The provisions of § 399 as well as the term prescribed in subsections 400 (1) and (2) of the Commercial Code do not apply to the merger of credit institutions.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(5) [Repealed – RT I 2007, 65, 405 - entry into force 15.12.2007]

§ 65. Methods of merger of credit institutions

(1) A credit institutions are permitted to merge only with credit institutions that have been established on the basis of the law of a member state and have a valid activity licence.

[RT I 2007, 65, 405 - entry into force 15.12.2007]

(2) Credit institutions may merge by founding a new credit institution. A credit institution being founded as a result of merger shall apply for authorisation pursuant to the procedure provided for in Chapter 2 of this Act.

(3) With the permission of the Financial Supervision Authority, a credit institution (credit institution being acquired) may merge with another credit institution (acquiring credit institution) such that the credit institution being acquired continues its activities on the basis of the authorisation of the acquiring credit institution.

(4) The stringency of prudential ratios of a credit institution being founded or an acquiring credit institution shall comply with the requirements of this Act.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 66. Merger agreement and merger report

(1) A merger agreement between credit institutions shall not be entered into with a suspensive or resolute condition unless the condition is to obtain authorisation for merger from the Financial Supervision Authority.

(2) Within three days after entry into a merger agreement, the management boards of the merging credit institutions shall notify the Financial Supervision Authority thereof and submit a merger plan concerning the acts related to the merger. The merger plan includes the time schedule of the merger, processes and activities planned within the framework of the merger and the structure of credit institutions after the merger.

[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

(3) A merger report and a final balance sheet which meets the requirements for annual reports and is prepared as of a date not earlier than three months before preparation of the merger report shall be prepared upon the merger of credit institutions.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 67. Appointment of auditor and auditor's report

(1) Upon the merger of credit institutions, the Financial Supervision Authority shall, on the proposal of the merging credit institutions, appoint at least one common auditor for all the merging credit institutions.

(2) The auditor shall prepare a report concerning the audit of the merger agreement and merger report, indicating the assessment methods used to determine the exchange ratio of shares or contributions, and give an opinion with regard to the areas specified in subsection 93 (2) of this Act and as to whether the stringency of prudential ratios of the acquiring credit institution and the credit institution being founded complies with the requirements of this Act.

[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

§ 68. Application for authorisation for merger

(1) In order to apply for authorisation for merger, an acquiring credit institution shall submit an application and the following documents to the Financial Supervision Authority:

- 1) the merger agreement or a notarised or officially certified transcript thereof;
- 2) the merger report;
- 3) the merger resolutions if the passing thereof is required;
- 4) the auditor's report;
- 5) the business plan for the first three years;
- 6) a draft of the accounting policies and procedures and data relating to the information systems to be used;
- 7) a description of the organisational structure of the credit institution;
- 8) documents to certify that the managers of the credit institution, the head of the internal audit unit and the chairman of the revision committee are trustworthy and meet the requirements of this Act;

[RT I, 02.11.2011, 1 - entry into force 12.11.2011]

9) written confirmation from the members of the management board certifying the correctness of the data in the documents submitted pursuant to this section.

(2) The Financial Supervision Authority may demand additional documents and information in order to specify or verify documents specified in subsection (1) of this section.

(3) If shareholders of a credit institution being acquired acquire a qualifying holding in the acquiring credit institution to the extent prescribed in § 30 of this Act, the documents prescribed in § 30 shall also be submitted.

(4) The Financial Supervision Authority may exercise on-the-spot supervision over acts related to a merger.
[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 69. Authorisation for merger

(1) The Financial Supervision Authority may refuse to grant authorisation for the merger of credit institutions if:

- 1) according to the opinion of the Financial Supervision Authority, the merging credit institutions do not have adequate management and financial resources;
- 2) the merger would significantly reduce effective competition in the banking market;
- 3) the applicant has failed to submit on time or has refused to submit the documents or information specified in subsections 68 (1) and (2) of this Act to the Financial Supervision Authority;
- 4) the merger may damage the interests of the depositors, clients or other creditors of the merging credit institutions.

(2) The Financial Supervision Authority shall make a decision on the grant of or refusal to grant authorisation for the merger of credit institutions not later than within thirty days but not earlier than within seven days as of the submission of the documents or information specified in subsections 68 (1) and (2) of this Act. The applicant shall be notified of the decision in writing within three days as of the date on which the decision is made.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 70. Notification of merger

(1) Merging credit institutions shall promptly give notice of obtaining authorisation for merger in at least one daily national newspaper and on websites of all the merging credit institutions.

[RT I 2007, 65, 405 - entry into force 15.12.2007]

(2) A credit institution may submit an application for entry of a merger in the commercial register promptly after publication of the notice specified in subsection (1) of this section.

§ 70¹. Bases for division of credit institution

(1) The credit institution being divided may submit to the Financial Supervision Authority an application for authorisation of division in case the following bases exist:

- 1) there is adequate data about the solvency problems arising from the financial situation of the credit institutions or there is a high risk that the credit institution cannot meet justified claims of even one client;
- 2) it is likely that after division the level of the prudential ratios of a credit institution which is required to meet the prudential ratios will be in conformity with the requirements provided by law.

(2) The Financial Supervision Authority has the right to require from the credit institution the resolution of the issue of division and submission of the application for getting an authorisation for the division if the bases provided for in subsection (1) of this section exist.

(3) Upon division of the credit institution the requirement for term provided in 443 (1) and (2) and provisions of subsections 447 (2¹) and (2²) of the Commercial Code shall not be applied.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(4) Upon auditing the division agreement and report the auditor shall prepare a report concerning the audit of the division agreement and division report, indicating the assessment methods used to determine the exchange ratio of shares or contributions, and give an opinion with regard to the areas specified in subsection 93 (2) of this Act and as to whether the stringency of prudential ratios of the acquiring credit institution and the credit institution being founded complies with the requirements of this Act.

[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

§ 70². Application for authorisation for division

(1) In order to apply for authorisation for division a credit institution being divided shall submit to the Financial Supervision Authority an application and the following data and documents:

- 1) the division agreement or its notarised or officially certified copy;
- 2) the division report;
- 3) the division resolution if the passing thereof is required;

[RT I, 02.11.2011, 1 - entry into force 12.11.2011]

- 4) the auditor's report;
- 5) the operations plan related to division of the credit institution being divided and other companies involved in the division;
- 6) the information about the acquiring company specified in subsection 30 (3) of this Act;
- 7) the circumstances related to division, concerning the depositors and other clients;
- 8) other information provided by law, particularly if there are changes resulting from division among the circle of persons who have a qualifying holding in the credit institution being divided or among managers;
- 9) written confirmation from the members of the management board certifying the correctness of the data in the documents submitted pursuant to this section.

(2) The Financial Supervision Authority may demand additional documents or information in order to specify or verify documents specified in subsection (1) of this section. In order to apply for the authorisation for division the credit institution being divided has the right to submit the resolution of division provided for in clause (1) 3) of this section immediately after the adoption of the resolution.

(3) The Financial Supervision Authority has the right to exercise on-the-spot supervision over acts related to division, including supervision in the acquiring company.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 70³. Authorisation for division

(1) Upon the grant of authorisation for division the Financial Supervision Authority shall particularly consider the protection of the interests of depositors, clients and other creditors, giving preference to the interests of the depositors and taking account of the need to ensure the stability of the Estonian financial system.

(2) The Financial Supervision Authority may refuse to grant authorisation if:

1) division may damage the interest of depositors, clients and other creditors of the credit institution being divided;

2) the acquiring company is subject to financial supervision of a contracting state and the division may, according to the opinion of the competent financial supervision authority of the contracting state, significantly damage the interests of the depositors, clients or other creditors of the company;

3) the acquiring company does not meet the requirements of the legislation for provision of services or activities specified in subsection 2 (1) of the Financial Supervision Authority Act if such services or activities are transferred in the course of division to the acquiring company;

4) the acquiring company is not subject to financial supervision;

5) the applicant has failed to submit or has refused to submit the information and documents listed in subsection 70²(1) of this Act or required on the basis of subsection 70²(2) of this Act to the Financial Supervision Authority by the due date specified by the Financial Supervision Authority, or

6) the agreement of division is entered into with a suspensive or resolute condition except if such condition is to obtain authorisation for division from the Financial Supervision Authority.

(3) The Financial Supervision Authority shall make a decision on the granting of or refusal to grant authorisation for division of the credit institution within thirty days after receipt of all the necessary documents or information specified in subsections 70²(1) and (2) of this Act. The applicant shall be notified of the decision in writing within three days as of the date on which the decision is made.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 70⁴. Notification of division

(1) The credit institution being divided shall promptly give notice of obtaining authorisation for merger in at least one daily national newspaper and its website.

(2) A credit institution is required to submit a petition for entry of a division in the commercial register promptly after the receipt of the authorisation for division provided in § 70³ subsection (1) of this Act and publication of the notice specified in subsection (1) of this section.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

Chapter 7

GUARANTEE OF FINANCIAL SOUNDNESS OF CREDIT INSTITUTIONS AND PROTECTION OF INTERESTS OF CLIENTS

Division 1

PRUDENTIAL RATIOS FOR CREDIT INSTITUTIONS

[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 71. Prudential ratios

(1) In order to guarantee the financial soundness of a credit institution, the credit institution is required at all times to adhere to prudential ratios provided for in Division 2¹ of this Chapter and Regulation (EU) No 575/2013 of the European Parliament of the Council.

(2) If a credit institution belongs to a consolidation group, the requirements for capital buffers provided for in Division 2¹ of this Chapter shall be observed both individually with regard to each credit institution and for the consolidation group as a whole.

(3) The management and internal audit systems, organisation of accounting and the documentation and conservation system of all transactions and actions of a credit institution and companies belonging to the same consolidation group with the credit institution shall enable the Financial Supervision Authority to control at all times the performance of the requirements arising from legislation and ensure the accuracy of the calculation of prudential ratios and the respective reporting.

(4) The provisions of subsection (3) of this section regarding the documentation and conservation system of transactions and actions shall also apply to a subsidiary of the credit institution within the consolidation group, who is not applied Directive 2013/36/EU of the European Parliament and of the Council and Regulation (EU) No.575/2013 of the European Parliament and of the Council, except in the case the parent undertaking of this subsidiary, including the financial holding company and a mixed-activity holding company, is able to prove to the Financial Supervision Authority that the application is in conflict with the legislation of the country of location of the subsidiary.

(5) The management board of a credit institution is required to notify the Financial Supervision Authority immediately of any violations of prudential ratios or requirements for the mandatory reserve of a credit institution.

(6) A credit institution is required to deposit its liquid assets in Eesti Pank at least to the extent provided for by the European Central Bank unless otherwise provided for by current law.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 72.–§ 79.[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 80. Liquidity

(1) A credit institution shall invest its assets such that the satisfaction of justified claims of creditors, i.e. the liquidity, is guaranteed at all times. For that purpose, a credit institution shall maintain the necessary ratio of liquid assets and current liabilities.

(2) The managers of a credit institution are required to structure the assets of the credit institution such that financing is not based on funds which are too short-term or inadequate. The managers are also required to monitor the terms of claims and commitments on a regular basis. The activities of the credit institution shall not be endangered by the expiry of terms for the conclusion of commitments. A credit institution shall monitor its liquidity on the basis of cash-flows.

(3) [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

(4) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 81. Limitations on participation of credit institutions in companies

(1) A credit institution shall not participate as a partner in a general partnership or as a general partner in a limited partnership.
[RT I 2006, 63, 467 – entry into force 01.01.2007]

(2) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 81¹. Limitations on investments in securitized exposures

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 82. General requirements for risk management and monitoring

(1) A credit institution and the companies belonging to the same consolidation group as the credit institution shall not, in their activities, take risks which could endanger the solvency of the credit institution or the consolidation group.

(2) Upon establishment, measurement and management of risks a credit institution and companies belonging to the same consolidation group shall have adequate and uniform strategies, procedures and systems proportionate to the nature, extent and level of complexity of their activities, which shall be regularly reviewed and updated and which are determined in the corresponding internal rules of procedure and are in effect in the credit institution or the companies belonging in the same consolidation group.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(2¹) The procedures, strategies, systems and corresponding internal rules specified in subsection (2) of this section shall guarantee adequate possibilities for identifying and checking transactions carried out between a credit institution and its parent company which is a mixed-activity holding company, and between a credit institution and other subsidiaries of its parent company which is a mixed-activity holding company. A credit institution is required to inform the Financial Supervision Authority immediately of any significant transaction with its parent company, which is a mixed-activity holding company, or with another subsidiary of such parent company.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(2²) The credit institution is required to establish an obligation to submit regularly reports that comprise all the existing and potential risks, risk management principles and amendments thereof, including external expert assessments, to the supervisory board of the credit institution and Risk Committee. The supervisory board and the Risk Committee shall determine the contents, format and frequency of submission of the reports.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) The credit risk strategy of a credit institution and the internal procedure rules based on such strategy must determine the objectives of the credit policy, the main principles of calculating the credit exposures, the criteria for evaluating credit risk, the principles for establishing a rating to debtors, the principles for taking and evaluating securities, the principles or granting and refinancing of loans, the competence to grant loans and organisation of making the corresponding decisions, and the functioning of the management of the credit risk.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(3¹) A credit institution must use effective procedures for the management and adequate evaluation of credit exposures, including for determining and write-down of receivables regarded as doubtful.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(3²) A credit institution must establish, in writing, objectives and rules of procedure for:

- 1) management and control of the risks in respect of which the methods for managing credit risks used by the credit institution have less effect than estimated;
- 2) management and control of the concentration of exposures, including for the management and control of the implementation of the methods for managing credit risks associated with clients, mutually connected persons of the central counterparty, the economic sector, a geographic region, issuer of guarantee, activity or product, and management and control of credit risk mitigation methods in the case of the concentration of exposures;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

- 3) the correct reflection, evaluation, management and control of the economic content of risks arising from securitization transactions, including the reputation risk, with regard which the credit institution is an investor, originator of loans or organiser of a transaction;

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

- 3¹) liquidity plans for handling the effect of planned and early amortization associated with the securitization transactions with the right of early amortisation arising from the revolving claims, with regard to which the credit institution is the originator of the claim;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

- 4) management and control of interest risk, including the interest risk unrelated to trading in financial instruments;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

- 4¹) identification, assessment and management of market risk, including handling a potential liquidity shortage when the short exposure falls due before long exposure;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

5) management and control of operational risk, including cases not likely to occur which could result in significant potential loss;
6) management and control of liquidity, and financing and identification, measurement, management and monitoring of a liquidity risk in order to ensure continuous planning for liquidity and alternative sources of financing.
[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(3³) A credit institution must have a system with clearly delineated areas of responsibility for managing the operational risk, and implemented processes for determining, measuring and managing the operational risk.
[RT I 2006, 63, 467 - entry into force 01.01.2007]

(3⁴) [Repealed - RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(3⁵) [Repealed - RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(3⁶) [Repealed - RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(3⁷) A credit institution is required to assess credit risks both at the level of individual counterparts, securities and securitized positions and also at the portfolio level.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3⁸) Internal methods of credit risk assessment shall not be based on external credit quality assessments only or be built on automatic relationships with external credit quality assessments.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3⁹) Upon assessment of credit risk and internal capital need a credit institution is required to take account of all the relevant information also in the case the calculation of capital need of the credit risk is based on the credit quality assessment of a rating agency or the lack of external credit quality assessment.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3¹⁰) a credit institution is required to diversify loan portfolios adequately, taking account of its target markets and credit strategy.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) The management board of a credit institution is required to notify the Financial Supervision Authority promptly of all facts that may materially affect the financial situation of the credit institution or the companies belonging to the same consolidation group as the credit institution.

§ 82¹. Requirements for liquidity risk management

(1) A credit institution is required to have a strategy, policy, procedures and systems for identification, measurement, management and monitoring of the liquidity risk at different predictable periods, including intraday periods in order to ensure the existence of an adequate liquidity buffer. For the purposes of this Act liquidity buffer is cash or other unencumbered liquid assets that will enable a credit institution or its subsidiary to meet the obligations in stress situations.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1¹) A credit institution is required to update regularly its liquidity risk management strategies, policies, procedures and limits and develop operating business continuity plans to ensure liquidity (hereinafter in this section a liquidity continuity plan) taking account of the results of the stress test specified in subsection (9) of this section.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) The strategy, policy, procedures and systems specified in subsection (1) of this section shall be:

1) in compliance with the business lines, foreign currency used and business units of a credit institution and also take account of the existence of subsidiaries and reflect the effect of the activities of credit institution on the financial system of each contracting state where it is operating;
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

2) include relevant systems of distribution of liquidity risk management expenses into other units earning profit;

3) be in correspondence with the extent, complexity, risk profile and risk tolerance of the activities of a credit institution determined by the management board, where the credit institution is required to notify all the business units concerned of the risk tolerance;

4) take account of the importance of credit institution in each state where it is operating.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(3) A credit institution is required to develop methods for identification, measurement, management and monitoring of the financing positions where the cash flows that are known and forecast, arising both from the

balance sheet and off-balance sheet assets and liabilities as well as a possible effect of the reputation risk are taken account of.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(4) A credit institution is required to differentiate the assets encumbered with collateral from unencumbered assets that are liquid and applicable at any time, primarily in cases where the financial position or solvency of a credit institution is at risk. Also, the persons who are holders of assets and the state where the assets are registered shall be taken account of.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(5) A credit institution is required to consider legal, supervisory and business limitations that are applied to ensure the liquidity of its business units by provision of supplementary capital and the potential transfers of assets unencumbered with collateral both in the European Economic Area and outside thereof.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(6) A credit institution is required to introduce different risk management measures, including the system of limitations and liquidity buffers that enable to cope with different stress events, to possess adequately dispersed resource structure and unhindered access to the sources of financing. Such measures shall be updated regularly.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(7) A credit institution is required to determine its maintenance period on the basis of liquidity buffers. The maintenance period is a period of time during which the credit institution is required to be able to act in a sustainable manner without using the financing sources from outside of the credit institution.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(8) Upon deciding to manage liquidity risk, involve resources and use financing sources a credit institution is required to use scenario analyses, sensitivity analyses and other stress tests (hereinafter stress test) and business continuity plans, the assumptions of which need to be updated regularly.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(9) Upon conducting stress tests of liquidity risk different scenarios related to both the credit institution itself and the whole market or the combination of the two shall be used in different forecast periods and stress conditions. The scenarios shall also take account of off-balance sheet liabilities and other contingent liabilities, including the liabilities of special securitization entities or other special purpose entities or persons, specified in Regulation (EU) no.575/2013 of the European Parliament and of the Council, with regard to whom the credit institution is acting as the organizer of the transaction or grantor of liquidity support in a substantial amount.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(10) In order to operate in a liquidity crisis situation the credit institution is required to have an adequate business continuity plan together with the relevant strategy and exhaustive measures applicable if a possible shortage of liquidity builds up, also including the subsidiaries located in another contracting state. Such plan shall be regularly tested at least once annually according to the scenarios used in the course of stress tests provided in subsection (8) of this section. The management board of the credit institution shall approve the reviews of the results of stress tests and, where necessary, specify the respective liquidity risk policies, limitations and the liquidity continuity plans.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(11) The liquidity continuity plan shall be applicable immediately. To implement the liquidity continuity plan the credit institution is required to keep liquidity buffers and the corresponding reserves which can be used without limitations and delay immediately when they are needed. Liquidity buffers and reserves shall be kept in the currency of the contracting state or third state if the credit institution has open positions in this currency.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 82². Excessive leverage risk management requirements

(1) Risk of excessive leverage is a risk that results from too fast growth of liabilities of the credit institution.

(2) A credit institution is required to establish the procedure and measures for assessment, management and control of excessive leverage. The non-compliance of exposure and assets and liabilities calculated pursuant to Regulation (EU) No.575/2013 of the European Parliament and of the Council shall be taken account of upon assessment of risk of excessive leverage.

(3) A credit institution is required to cope with stress events which are related to risk of excessive leverage, and take account of the potential decrease of own funds of the credit institution due to losses.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 83. Requirements for loans

(1) For the purposes of this Act, a loan is deemed to be the assets or off-balance sheet items of a credit institution arising from contracts under which the lender grants or undertakes to grant money or other assets to the recipient of the loan or another entitled person pursuant to the contract and the recipient of the loan undertakes to return the money or other assets to the lender under the prescribed conditions.

(2) Eesti Pank shall establish the requirements for granting and monitoring loans.
[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(2¹) For the purposes of financial supervision at macro level Eesti Pank may establish requirements to all credit institutions operating in Estonia, their parent companies and subsidiaries located in Estonia and to the subsidiaries, branches and representative offices of foreign credit institutions operating in Estonia for:

- 1) loan amount and loan collateral value ratio;
- 2) loan amount and the borrower's income ratio;
- 3) periodic loan and interest payments and the borrower's income ratio;
- 4) term of loan;
- 5) loans and deposits ratio.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

(3) Upon granting loans, a credit institution is required to observe the main internal crediting principles of the credit institution, the principles of sound banking management and responsible lending. For observance of the principle of responsible lending, a credit institution is required to collect and store information on the size of the financial obligations of and performance of payment obligations by the clients and to use such data to calculate a reasonable loan load for the clients.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(3¹) Upon granting of a loan to a consumer or provision of consulting service specified in §§ 7 and 51 of the Creditors and Credit Intermediaries Act to a consumer a credit institution is required to follow the provisions of §§ 47–53¹ of the Creditors and Credit Intermediaries Act. The credit institution is required to ensure that the activities of a subsidiary belonging to the same consolidation group as the credit institution, engaged in the granting or intermediating of a loan to consumers, specified in subsection 2 (8) of the Creditors and Credit Intermediaries Act, is in compliance with the requirements provided for in §§ 38, 40, 43, subsections 44 (2) and (3) and §§ 47–53¹, 57 and 58 of the Creditors and Credit Intermediaries Act.

[RT I, 11.03.2016, 1 – entry into force 21.03.2016]

(4) The procedure for granting loans to the members of staff of a credit institution shall be approved by the supervisory board of the credit institution.

§ 84. Loans to persons related to credit institutions

(1) Persons related to a credit institution are:

- 1) the managers of the credit institution, the head of the internal audit unit or the chairman of the revision committee, and the controller;
- 2) persons with economic interests equivalent to those of the persons specified in clause 1) of this subsection;
- 3) shareholders who are natural persons and have qualifying holdings in the credit institution;
- 4) members of management boards or of substituting bodies of shareholders who are legal persons and have qualifying holdings in the credit institution.

(2) Persons with equivalent economic interests are the spouse or cohabitee, children, parents, sisters and brothers of a manager of a credit institution, of the head of an internal audit unit or of the chairman of the revision committee.

(3) The following are also deemed to be persons with equivalent economic interests:

- 1) companies controlled, within the meaning of § 10 of the Securities Market Act, by a manager of a credit institution, by the head of the internal audit unit or chairman of the revision committee or by a person specified in subsection (2) of this section, and by parent companies and subsidiaries of such companies;

[RT I 2005, 13, 64 - entry into force 18.03.2005]

- 2) companies where a manager of a credit institution, head of an internal audit unit or chairman of the revision committee or a person specified in subsection (2) of this section is a member of the directing body.

(4) Loans may be granted to persons related to a credit institution only on the basis of a specific unanimous resolution of the management board. The above-mentioned condition does not apply if the amount of the loan is less than 25 per cent of the annual remuneration which the chairman of the management board of the credit institution received from the credit institution, unless a smaller minimum rate has been established by a resolution of the supervisory board.

(5) A manager of a credit institution or a member of the credit committee thereof, an employee who decides on the grant of loans, and other persons who have equivalent economic interests to such persons shall not participate in the process of deciding on the grant of a loan to him or her.

(6) The conditions of loans granted to persons related to a credit institution and granted to shareholders of a credit institution shall not be less stringent than those of loans granted to other persons who have similar solvency and collateral.

(7) The provisions of clauses 281 (1) 1), 2) and 4) of the Commercial Code do not apply to credit institutions.

(8) The ratio of exposures of a credit institution to own funds shall not be over five per cent with regard to the persons specified in subsection (1) of this section and shareholders of a credit institution who are legal persons, and such shareholders of a company belonging to the same consolidation group as the credit institution who own more than ten per cent of the share capital of the company.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(9) The maximum limit specified in subsection (8) of this section shall not apply to a parent company of the credit institution, another subsidiary of the parent company and a subsidiary of the credit institution on condition that these undertakings are subject to consolidated supervision of the financial supervision authority of the contracting state together with the credit institution or to the consolidated supervision of the financial supervision authority of a third state executing consolidated supervision which is equivalent to the requirements established in legislation of the European Union.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(10) A credit institution is required to immediately notify the Financial Supervision Authority of exceeding the maximum limit provided for in subsection (8) of this section.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 85. Limitations on concentration of exposures

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 85¹. [Repealed - RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 85². Exceptions in calculation of limitations on concentration of exposures

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 85³. Terms of authorisation procedure upon calculation of prudential norms

The Financial Supervision Authority shall decide to grant authorisation specified in Regulation (EU) No.575/2013 of the European Parliament and of the Council or refuse to grant such authorisation within one month after the receipt of all the required documents and information but no later than three months as of the date of receipt of the corresponding application.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86. Valuation of assets

(1) Credit institutions are required to value their assets on a regular basis and use all measures in compliance with the principles of sound banking management and law to collect claims.

(2) Credit institutions are required to value all claims on the basis of the likelihood of payment thereof. Claims the full or partial payment of which is unlikely shall be written off to the extent that is valued as unlikely to be paid.

(3) The procedure for valuation of claims shall be established by Eesti Pank.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

Division 2 METHODS FOR CALCULATION OF CAPITAL REQUIREMENTS

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86¹.–§ 86⁴³.[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

Division 2¹

Capital buffers

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁴⁴. General requirements for capital buffers

(1) A credit institution shall, in addition to the own funds requirement provided for in Article 92 of Regulation (EU) No 575/2013 of the European Parliament and of the Council maintain the capital conservation buffer provided for in § 86⁴⁵ and, if this is applicable thereto, the following buffers:

- 1) countercyclical capital buffer specified in § 86⁴⁶;
- 2) global systemically important credit institutions buffer specified in § 86⁴⁷;
- 3) other systemically important credit institutions buffer specified in § 86⁴⁸;
- 4) systemic risk buffer specified in § 86⁴⁹.

(2) Buffers specified in subsection (1) of this section constitute an aggregate combined buffer.

(3) A credit institution is required to maintain the buffers specified in subsection (1) of this section on an individual and consolidated basis unless otherwise provided for in this Act.

(4) The requirements for maintaining buffers specified in subsection (1) of this section are added to the requirement for Common Equity Tier 1 instruments provided for in Article 92 of Regulation (EU) No 575/2013 of the European Parliament and of the Council and requirement for additional capital calculated pursuant to subsection 104 (2) of this Act or requirement for increase of own funds unless otherwise provided for in this Act.

(5) A credit institution shall not make payments at the expense of Common Equity Tier 1 instruments so that it would not meet the requirements for maintaining buffers specified in subsection (1) of this section.

(6) If the credit institution fails to meet the requirements for maintaining the buffers specified in subsection (1) of this section to the full, the limitations on distribution of instruments in the composition of the Common Equity Tier 1 instruments provided for in § 86⁵⁰ shall be implemented with regard to the credit institution.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁴⁵. Capital conservation buffer

The capital conservation buffer is 2.5 per cent of the total risk exposure amount calculated on the basis of Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁴⁶. Countercyclical capital buffer

(1) The credit institution specific countercyclical buffer is equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the weighted average of the countercyclical buffer rates applicable in the country of location of exposures calculated in accordance with the subsection (9) of this section.

(2) The countercyclical capital buffer rate is up to 2.5 per cent of the total risk exposure amount unless otherwise provided for in this section. The countercyclical capital buffer rate shall be calibrated in the steps of 0.25 percentage points. The exact countercyclical capital buffer rate shall be established by Eesti Pank.

(3) Upon establishment of the countercyclical capital buffer rate the following shall be taken account of:

- 1) the phase of credit cycle;
- 2) risks arising from the credit growth;
- 3) the specificities of the local economy;
- 4) buffer guide;
- 5) credit growth and the change in the ratio of credit granted to gross domestic product;
- 6) recommendations issued by the European Systemic Risk Board in accordance with Regulation (EU) No 1092/2010 of the European Parliament and of the Council on the macroprudential oversight of the financial system (OJ L 331, 15.12.2010, pp. 1–11)
- 7) other circumstances that are appropriate upon treatment of cyclical systemic risk.

(4) Based on reasoned considerations Eesti Pank may establish a countercyclical capital buffer rate in excess of 2.5 per cent of the total risk exposure amount. Eesti Pank may recognize the countercyclical capital buffer rate established by a competent authority of the contracting state or third state in excess of 2.5 per cent of the total risk exposure amount located in this state calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(5) If the competent authority of a third country has not established or disclosed a countercyclical capital buffer rate, the countercyclical capital buffer rates for Estonian credit institutions' exposures in that third country shall be calculated in accordance with subsection (9) of this section.

(6) The countercyclical capital buffer rate shall be determined for each quarter. Upon initial establishment or increase of the countercyclical capital buffer rate it shall be disclosed 12 months before the rate or a new rate enters into force. If exceptional circumstances become evident the term for taking effect of the rate or a new rate may be shorter than 12 months as of the disclosure of the rate or a new rate.

(7) The countercyclical capital buffer rate and the date of entry into force thereof shall be disclosed on the website of Eesti Pank. The following shall be disclosed:

- 1) the applicable countercyclical capital buffer rate;
- 2) the relevant ratio of credit granted to gross domestic product and its deviation from the long-term trend;
- 3) the buffer guide established on the basis of subsection (3) of this section;
- 4) the reason for the countercyclical capital buffer rate;
- 5) where the countercyclical capital buffer rate is increased, the date from which the credit institutions are required to maintain the increased buffer;
- 6) where the date of the entry into force of a new rate of the countercyclical capital buffer rate is less than 12 months after the date of the announcement of the new rate, the exceptional circumstances that justify that shorter deadline for application;
- 7) where the countercyclical capital buffer rate is decreased, the expected period during which no increase in the buffer rate is proposed.

(8) Eesti Pank shall notify the European Systemic Risk Board of the establishment of the countercyclical capital buffer rate.

(9) Eesti Pank shall establish a specific procedure for calculation of credit institution specific countercyclical capital buffer rate and recognition of the countercyclical capital buffer rate established by a competent authority of another contracting state or third state.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁴⁷. Global systemically important credit institution and its buffer

(1) A global systemically important credit institution may, for the purposes of Article 4 (1) (29), (31) and (33) 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, be a European Union parent company which is a credit institution, financial holding company or mixed-activity holding company. A subsidiary of the parent company referred to in this subsection may not be deemed a global systemically important credit institution.

(2) Identification of the global systemically important credit institution shall be based on the following criteria:

- 1) size of the consolidation group;
- 2) interconnectedness of the consolidation group with the financial system;
- 3) substitutability of the services or of the financial infrastructure provided by the consolidation group;
- 4) complexity of the consolidation group;
- 5) cross-border activity of the consolidation group, including cross border activity in third countries.

(3) On the basis of subsection (2) of this section an overall score shall be assigned to each global systemically important credit institution and the corresponding category shall be given. Upon assignment of the overall score each criterion shall receive an equal weighting.

(4) Global systemically important credit institutions are divided into at least five categories on the basis of the overall score determined pursuant to subsection (3) of this section, taking account of the principle of increase of systemic significance.

(5) Eesti Pank may determine the requirement for global systemically important credit institutions buffer as follows:

- 1) the requirement for the lowest category of the global systemically important credit institutions buffer is one per cent of the total risk exposure amount calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- 2) for each following category, except for the highest category, the rate specified in clause 1) of this section shall be added 0.5 per cent of the total risk exposure amount calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- 3) the requirement for the highest category of the global systemically important credit institutions buffer is 3.5 per cent of the total risk exposure amount calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(6) A global systemically important credit institution is required to maintain the global systemically important credit institutions buffer on a consolidated basis.

(7) Eesti Pank shall submit a list of global systemically important credit institutions and the categories assigned thereto to the European Commission, the European Banking Authority and the European Systemic Risk Board. Determination of the global systemically important credit institutions and the categories assigned thereto shall be reviewed at least once annually and the relevant global systemically important credit institution, the European Commission, the European Banking Authority and the European Systemic Risk Board shall be informed of the results.

(8) On the basis of a justified supervisory assessment Eesti Pank shall have the right to assign the global systemically important credit institution from the category based on the overall score to a higher category, or determine the credit institution with the lower overall score than the score corresponding to the lowest category as the global systemically important credit institution and assign it to the relevant category. The European Banking Authority shall be notified of the changes made in categories on the basis of this subsection and the reasons therefor.

(9) The list of global systemically important credit institutions operating in Estonia shall be approved by Eesti Pank. Eesti Pank shall disclose the names of the global systemically important credit institutions, the categories thereof and the changes made in categories on its website.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁴⁸. Other systemically important credit institution and its buffer

(1) Other systemically important credit institution may be, for the purposes of Article 4 (1) (29), (31) and (33) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, a European Union parent company or credit institution that is a credit institution, financial holding company or mixed-activity holding company.

(2) Identification of other systemically important credit institution is based on the following characteristics:

- 1) size of the credit institution;
- 2) importance of the credit institution for the economy of the European Union or relevant contracting state interconnectedness of the consolidation group with the financial system;
- 3) importance of the cross-border activity of the credit institution;;
- 4) interconnectedness of the credit institution or its consolidation group with the financial system.

(3) Eesti Pank may require, on an individual, sub-consolidated or consolidated basis, as applicable, to maintain other systemically important credit institution buffer of up to two per cent of the total risk exposure amount calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(4) Establishment of other systemically important credit institution buffer shall not generate disproportionately negative effects on the financial system of other contracting states or the European Union or create an obstacle to the functioning of the internal market.

(5) Eesti Pank shall notify the European Commission, the European Banking Authority, the European Systemic Risk Board and relevant competent authorities appointed by the contracting states of the establishment of the requirement specified in subsection (3) of this section for at least one month before the disclosure of the corresponding decision. The notification shall include:

- 1) the justification for why the other systemically important credit institution buffer is considered likely to be effective and proportionate to mitigate the risk;
- 2) an assessment of the likely positive or negative impact of the other systemically important credit institution buffer on the internal market of the European Union, based on information which is available to the contracting state;
- 3) buffer rate which is sought to be set.

(6) Eesti Pank shall review the requirement for other systemically important credit institution buffer at least annually.

(7) The list of other systemically important credit institutions operating in Estonia shall be approved by Eesti Pank. Eesti Pank shall disclose the names of other systemically important credit institutions on its website.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁴⁹. Systemic risk buffer

(1) The objective of the systemic risk buffer is to prevent and mitigate long-term non-cyclical systemic or macroprudential risks not covered by the requirement for own funds established by Regulation (EU) No 575/2013 of the European Parliament and of the Council. The systemic risk buffer rate shall be established by Eesti Pank.

(2) The requirement for systemic risk buffer may be established on all credit institutions, a group of credit institutions or an individual credit institution. The requirement for systemic risk buffer may be different by groups of credit institutions or credit institutions.

(3) Upon establishment the systemic risk buffer rate is at least one per cent of the exposures to which the requirement for systemic risk buffer is applied.

(4) The systemic risk buffer rate shall be reviewed at least every two years. The systemic risk buffer rate may be adjusted by 0.5 percentage points.

(5) The requirement for systemic risk buffer shall be set for the exposures located in Estonia. The requirement for systemic risk buffer may also be applied to exposures in third countries. The requirement for systemic risk buffer may be applied to exposures in other contracting states as follows:

- 1) if the systemic risk buffer rate is established to the extent of up to five per cent, it shall be applied to all exposures in the European Union;
- 2) if the systemic risk buffer rate is established in excess of the rate provided for in subsection (1) of this subsection, the opinion of the European Commission concerning the application of the requirement for systemic risk buffer is required to be positive.

(6) Setting systemic risk buffer shall not have an disproportionally negative impact on other contracting states or financial system of the European Union or prevent operation of the internal market.

(7) Setting the requirement for systemic risk buffer shall be disclosed on the website of Eesti Pank. The announcement shall disclose at least the following information:

- 1) the applicable systemic risk buffer rate;
- 2) credit institutions to which a systemic risk buffer applies;
- 3) a justification for setting a systemic risk buffer;
- 4) the date from which the requirement for a systemic risk buffer shall take effect;
- 5) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(8) Eesti Pank may refuse to disclose the information specified in clause (7) 3) of this section if the disclosure thereof would damage the financial stability.

(9) Eesti Pank shall submit information concerning the setting or amendment of the systemic risk buffer rate up to the percentage specified in clause (5) 1) of this section for one month before the disclosure of the corresponding decision to the European Commission, the European Banking Authority and the European Systemic Risk Board and competent authorities of foreign states.

(10) Eesti Pank shall submit information concerning the setting or amendment of the systemic risk buffer rate above the percentage specified in clause (5) 1) of this section three months before the disclosure of the corresponding decision to the European Commission, the European Banking Authority and the European Systemic Risk Board and competent authorities of the relevant foreign states. In the case provided for in the first sentence of this section the systemic risk buffer rate shall be established after they have received the opinion from the European Commission. If Eesti Pank sets the systemic risk buffer rate despite the negative opinion of the European Commission, Eesti Pank is required to justify its decision to the European Commission.

(11) Information submitted pursuant to subsections (9) and (10) of this section shall include:

- 1) the description of the systemic or macroprudential risks in Estonia;
- 2) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system in Estonia;
- 3) justification for the requirement for systemic risk buffer rate;
- 4) the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- 5) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available;
- 6) the justification of why none of the existing measures in this Act or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, will be adequately effective to prevent and mitigate the identified systemic or macroprudential risk;
- 7) the systemic risk buffer rate that is sought to be established.

(12) If the requirement for global systemically important credit institution buffer and the requirement for other systemically important credit institution were applied concurrently to the consolidation group or in addition to the abovementioned also the requirement for systemic risk buffer, the highest of them shall be applied.

(12¹) If the requirement for systemic risk buffer applies only to exposures located in Estonia and does not apply to exposures outside Estonia, the requirement for systemic risk buffer shall be applied cumulatively and it shall be added to the requirement for buffer of a global systemically important credit institution or of other systemically important credit institution..

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(13) Eesti Pank shall establish the procedure for recognition of systemic risk buffer rate established in another contracting state or third state.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁵⁰. Restrictions on distribution of equity

(1) A credit institution that is in non-compliance with the combined capital buffer requirement shall calculate the maximum distributable amount and submit it together with the underlying calculations to the Financial Supervision Authority.

(2) A credit institution that is in non-compliance with the combined capital buffer requirement shall not, before submission of the maximum distributable amount to the Financial Supervision Authority:

- 1) make payouts at the expense of Common Equity Tier 1 capital;
- 2) undertake an obligation to pay performance pay or make additional payments related to pension benefits in addition to the provisions of the Funded Pensions Act or pay the performance pay for the period when the credit institution failed to meet the combined capital buffer requirements;
- 3) make payments on Additional Tier 1 instruments.

(3) A credit institution that is in non-compliance with the combined capital buffer requirement shall not make payments specified in clauses (2) 1) and 3) of this section or undertake obligations specified in clause (2) 1) of this section in excess of the maximum amount of payment provided for in subsection (1) of this section.

(4) The restrictions provided for in this section shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of the delay of payment or a reasoned bankruptcy claim with regard to the credit institution.

(5) A credit institution that is in non-compliance with the combined capital buffer requirement and intends to make payments specified in subsection (2) of this section or undertake obligations specified in the same subsection, shall submit to the Financial Supervision Authority the following data:

- 1) the amount of own funds, including Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital;
- 2) the amount of its interim and year-end profits;
- 3) the maximum distributable amount calculated in accordance with the procedure established on the basis of subsection (8) of this section;
- 4) the distributable amount by title, including dividend payments, share buybacks, payments on Additional Tier 1 instruments, the payment of performance pay, making discretionary pension benefits by creation of a new obligation to pay, and payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

(6) A credit institutions shall maintain arrangements to ensure that the distributable amount and the maximum distributable amount are calculated accurately, and shall be able to demonstrate the accuracy to the competent Financial Supervision Authority at the request thereof.

(7) For the purposes of clause (2) 1) of this section the payments on Common Equity Tier 1 capital shall include the following payments:

- 1) payment of cash dividends;
- 2) distribution of fully or partly paid additional shares or other capital instruments referred to in Article 26(1) (a) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- 3) redemption or purchase of its own shares or other capital instruments specified in Article 26(1)(a) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- 4) repayment of amounts paid up in connection with capital instruments specified in Article 26(1)(a) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- 5) distribution of instruments specified in points (b) to (e) of Article 26(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(8) The procedure for calculation of maximum distributable amount shall be calculated by Eesti Pank.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 86⁵¹. Capital conservation plan

(1) Where an institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the Financial Supervision Authority no later than five working days after the identification of failure to meet the combined buffer requirement. The Financial Supervision Authority may extend the term for submission of the capital conservation plan for up to 10 days.

(2) The capital conservation plan shall include the following:

- 1) estimates of income and expenditure and a forecast balance sheet;
- 2) measures to increase the capital adequacy ratios;
- 3) a plan and timeframe for the increase of own funds with the objective to meet fully the combined buffer requirement;

4) any other information that the Financial Supervision Authority considers necessary to carry out the assessment of the capital conservation plan.

(3) A credit institution shall be able to demonstrate with the capital conservation plan to the Financial Supervision Authority that upon implementation thereof the credit institution shall be able to maintain the required level of own funds necessary for compliance with the combined capital requirement or achieve it within an appropriate period.

(4) If the capital conservation plan fails to ensure the compliance with the combined buffer requirement, one of the following measures shall be applied with regard to the credit institution:

1) the credit institution is required to increase own funds to the level and by the term specified by Financial Supervision Authority;

2) restrictions provided for in § 86⁵⁰ of this Act shall be implemented or powers specified in § 104 for making a precept are exercised.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

Division 3

PAYMENT AND SETTLEMENT SYSTEMS AND PROTECTION OF CLIENTS

[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 87. Transactions of credit institutions

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) A credit institution shall open an account in Eesti Pank. The conditions for opening an account of a credit institution and using thereof shall be established by Eesti Pank.

(2) A credit institution having an account in Eesti Pank and an Estonian branch of a foreign credit institution may join any payment system administered by Eesti Pank provided that they meet the conditions for joining determined by the rules of operation of the payment system and conclude the relevant subscription contract. The rules of operation of the payment systems administered by Eesti Pank shall be established by Eesti Pank.

(3) The payment system specified in subsection (2) of this section is deemed to be a body of rules and procedures for the settlement of payments, operating between Eesti Pank and three or more participants in the payment system.

(4) Bilateral or multilateral offsetting of liabilities may be used in the payment system administered by Eesti Pank if the procedure for such offsetting has been prescribed by the rules of operation of the payment system.

(5) A payment order given to the administrator of a payment system pursuant to the rules of the payment system is irrevocable. Declaration of a moratorium or appointment of a temporary bankruptcy registrar or implementation of a crisis resolution measure or right provided for in the Financial Crisis Prevention and Resolution Act shall not suspend the execution of the payment order given pursuant to the rules of the payment system. A payment order given before the declaration of a moratorium or appointment of a temporary bankruptcy registrar shall be executed out of the collateral instruments of the payment system, the procedure for formation and use of which shall be established by Eesti Pank.

[RT I, 19.03.2015, 4 – entry into force 29.03.2015]

(6) A correspondent relationship for the purposes of this Act is a legal relationship arising from a contract entered into by credit institutions on the basis of which one credit institution uses an account (hereinafter referred to as correspondent account) at another credit institution (hereinafter referred to as correspondent bank), which, in addition to the services offered by the correspondent bank, it uses also for providing services to its customers in its name.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 88. Information subject to banking secrecy

(1) All data and assessments which are known to a credit institution concerning a client of the credit institution or other credit institution are deemed to be information subject to banking secrecy.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) The following data are not deemed to be information subject to banking secrecy:

1) data which are public or available from other sources to persons with a legitimate interest;

2) consolidated data or other similar data on the basis of which data relating to a single client or the identities of persons included in the set of persons referred to in the consolidated data cannot be ascertained;
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

3) a list of the founders and shareholders or members of a credit institution and data relating to the sizes of their holdings in the share capital of the credit institution, regardless of whether or not they are clients of the credit institution.

4) information on the accuracy of the performance of obligations by a client to a credit institution.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) Details of a client which are subject to banking secrecy may be disclosed by a credit institution to third persons if the client has granted consent therefor in a format which can be reproduced in writing or if the obligation or right to disclose information subject to banking secrecy arises from the provisions of this section.
[RT I, 11.03.2016, 1 - entry into force 21.03.2016]

(3¹) A credit institution has the right to disclose information about the creation of a client relationship to the Police and Border Guard Board when using data entered in the national databases, including the identity documents database, for establishment and verification of identity documents..
[RT I, 06.07.2016, 2 - entry into force 16.07.2016]

(4) The shareholders, members, managers, members of staff of a credit institution and other persons who have access to information subject to banking secrecy are required to maintain the confidentiality of such information indefinitely unless otherwise provided for in this Act. The compliance with the rights and obligations of a credit institution related to the disclosure of the information subject to banking secrecy provided for in subsections (4¹) – (5¹) of this section by managers or members of staff of a credit institution shall not be deemed violation of confidentiality requirements imposed by law or agreement.
[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

(4¹) A credit institution is required to disclose the information subject to banking secrecy to Eesti Pank, the Financial Supervision Authority and to the financial supervision authority of a foreign state through the Financial Supervision Authority, as well as to the European Central Bank for the performance of the duties assigned thereto by law, including for the conduct of misdemeanour procedures or other similar proceedings.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4²) A credit institution shall have the right and obligation to disclose information subject to banking secrecy for the performance of duties, assigned thereto by law, to:

1) the Financial Intelligence Unit and the Estonian Internal Security Service in the cases and to the extent prescribed in the Money Laundering and Terrorist Financing Prevention Act and the International Sanctions Act;
2) the Tax and Customs Board in the cases and to the extent provided for in the Taxation Act, Tax Information Exchange Act and the Simplified Business Income Taxation Act;
[RT I, 07.07.2017, 2 - entry into force 01.01.2018]

3) to the Police and Border Guard Board in the cases and to the extent provided for in subsection 20⁸(3) of the Identity Documents Act.
[RT I, 06.07.2016, 2 - entry into force 16.07.2016]

(5) In response to a written inquiry or an inquiry in an electronic format or an inquiry submitted through the electronic seizure system provided for in § 63¹ of the Code of Enforcement Act (hereinafter electronic seizure system) a credit institution shall disclose information subject to banking secrecy to:

[RT I, 23.03.2017, 1 – entry into force 01.04.2017]

1) a court in the cases and in the procedure prescribed by laws governing court proceedings;
2) a pre-trial investigation authority and the Prosecutor's Office if a criminal proceeding is commenced, including on the basis of a request for legal assistance received from a foreign state pursuant to the procedure provided for in a treaty or for the performance of a duty provided for in the European Union law, for the performance of the cooperation agreement of an international convention or other treaty or the police or other similar competent authority;
3) a security authority for the performance of the duties provided by the Security Authorities Act and for the conduct of the security vetting specified in the State Secrets and Classified Information of Foreign States Act
4) the Tax and Customs Board pursuant to the provisions of the Taxation Act, including in the commenced misdemeanour proceedings on the basis of the substantiated ruling or upon the conduct of state supervision for the performance of the duties provided for in the Gambling Act;
5) a bailiff for the performance of duties provided for in the Code of Enforcement Procedure;

5¹) the Estonian Chamber of Bailiffs and Trustees in Bankruptcy for the performance of the duties of an information authority provided for in Article 14 of Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189, 27.06.2014, pp. 59–92);
[RT I, 26.06.2017, 17 – entry into force 06.07.2017]

6) temporary trustee and trustee in bankruptcy for the performance of duties provided for in the Bankruptcy Act;

7) the National Audit Office for the performance of the duties provided for in the National Audit Office Act;

8) a person appointed by the Guarantee Fund on the basis of the Guarantee Fund Act;

9) a person entitled to succeed or a person authorised by the latter, to a notary, to a person making the inventory of an estate at the appointment of a notary and to the administrator of an estate appointed by a court, and to a consular representation of a foreign state in connection with estates and data relating thereto, upon submission of relevant written documents;

10) a depository of declarations of economic interests for the verification of the correctness of the data submitted in the declaration of economic interests of a person on the basis of Anti-Corruption Act.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5¹) In response to a written inquiry or an inquiry in a format which can be reproduced in writing, a credit institution may disclose information subject to banking secrecy to the following persons:

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

1) its parent undertaking that needs the data subject to banking secrecy for the preparation of consolidated reports;

2) a financial institution in the same consolidation group with the credit institution or another credit institution, who needs the data concerning the history of performance of payment obligations of a client for calculation of the capital requirement for credit risk and implementation of the principle of responsible lending;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

3) an undertaking in the same consolidation group with the credit institution, who needs the data subject to banking secrecy for the application of the diligence measures provided for in the Money Laundering and Terrorist Financing Prevention Act, and other person to the extent which is necessary for implementation of § 51 of the Money Laundering and Terrorist Financing Prevention Act.

[RT I, 17.11.2017, 2 - entry into force 27.11.2017]

(5²) The persons specified in clause (5¹) 2) of this section are allowed to forward the data of the client related to the violation of obligation if no more than seven years has passed as of the end of the violation and the personal data of the client related to the violation if no more than five years has passed from the termination of the violation.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) An inquiry specified in subsection (5) of this section shall set out:

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

1) the name of the person submitting the inquiry, his or her official title or a reference to any other legal basis for his or her competence, and his or her address and information of the means of communication;

2) the name or business name of the client with regard to whom the inquiry is submitted and the personal identification code or date of birth or the registry code of the client;

3) the purpose of use of the requested data and an exhaustive list or description of the data;

4) the legal grounds for the inquiry;

5) the signature of the person submitting the inquiry.

(6¹) A credit institution shall disclose information subject to banking secrecy in response to an inquiry specified in clauses (5) 1)-4) of this section if at least the following is set out in the inquiry:

1) the data on the identifier or contract concerning the payment account, payment card or other means of payment or payment instrument or

2) other data which would enable identification of the client..

[RT I, 06.07.2016, 2 - entry into force 16.07.2016]

(6²) A credit institution shall disclose information subject to banking secrecy in response to an inquiry specified in clauses (5) 1)-4) of this section:

1) on a person holding the right of representation with regard to the payment account of a client specified in the inquiry;

2) on a client with regard to whose payment account the person specified in the inquiry has the right of representation.

[RT I, 06.07.2016, 2 - entry into force 16.07.2016]

(6³) The inquiry specified in subsection (5) of this section, which has been submitted through the electronic seizure system, shall set out:

1) data allowing identification of the person who forwarded the inquiry;

2) data allowing identification of the person concerned;

3) a list or description of the requested data;

4) the legal basis for submission of inquiry.

[RT I, 23.03.2017, 1 – entry into force 01.04.2017]

(6⁴) A credit institution is not required to verify the accuracy of the data entered into the data fields of the inquiry submitted through the electronic seizure system.

[RT I, 23.03.2017, 1 - entry into force 01.04.2017]

(7) Persons to whom information subject to banking secrecy is disclosed may use such information only for the performance of duties arising from legislation and for the purpose of specified in the inquiry and the obligation to maintain the confidentiality of such information indefinitely and the liability therefor shall extend to such persons unless otherwise provided by law.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(8) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(9) A credit institution has the right to disclose information subject to banking secrecy to a preliminary investigator, the public prosecutor and the courts in order to protect its violated or contested rights or freedoms pursuant to the procedure determined by law.

(10) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(11) A credit institution shall have the right to disclose information, which is subject to banking secrecy concerning the circumstances related to making a payment transaction, to the client thereof or to the provider of payment service related to the execution of payment transaction:

1) if this is necessary for notification of the results of the investigation related to outstanding or incorrectly executed payment or

2) in order that the client of the credit institution or of the provider of another payment service connected to the execution of payment transaction could file a legal claim against the wrong beneficiary to recover funds if the recovery of funds failed through the payment service provider serving the corresponding client.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

§ 89. Protection of clients

(1) For the purposes of this Act, a client of a credit institution is any person who uses or has used a service offered by the credit institution, or a person who has turned to the credit institution with a view to using a service and who has been identified by the credit institution.

(1¹) The accounts maintained for depositing the resources of clients by a credit institution that are not payment accounts for the purposes of the subsection 709 (4) Law of Obligations Act, and the services related thereto shall be applied the provisions of clauses 711 (1) 1)-3), 9)-12), 21)-24), subsections 711 (2), (3) and (5) and §§ 714 and 718-719¹ and subsections 720 1)-3), 5) and 6) with regard to the payment service contract and payment account.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(1²) A credit institution shall submit information to a depositor with regard to deposits guaranteed by the Guarantee Fund on a bank statement where reference is made to the information form submitted to the depositor pursuant to § 31 of the Guarantee Fund Act..

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

(1³) A credit institution may not require compensation for damages or contractual penalty from the client upon merger of a credit institution with another credit institution or conversion of a subsidiary credit institution into a branch and if the client has cancelled the contract for payment service contract or deposit contract within three months as of the publication of the corresponding notice on the web page of the credit institution and has given the payment order for transfer of the deposit and accrued interests specified in subsection 25 (1) of the Guarantee Fund Act to an account designated by the client in another credit institution.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

(2) The relationships of a credit institution with its clients shall be regulated by contracts entered into in writing, in a form enabling reproduction in writing or in an electronic form.

(2¹) [Repealed - RT I, 17.11.2017, 2 - entry into force 27.11.2017]

(2²) The consent that is necessary for processing the personal data pursuant to § 12 of the Personal Data Protection Act may be contained in standard terms.

(2³) Provisions of the subsection 43 (2) of the Law of Obligations Act shall apply to the general terms and conditions with which a credit institution or a company belonging to the same consolidation group as the credit institution reserves its right to amend the general terms and specified in subsection (2²) of this section. Amendment of general terms and shall be considered unreasonable regarding a data subject primarily if the amendment grants the credit institution or company belonging to the same consolidation group as the credit institution the right to process personal data in a scope that the data subject could not have reasonably expected upon signing the contract.

[RT I 2008, 3, 21 - entry into force 28.01.2008]

(3) All clients have the right to access all data subject to mandatory disclosure pursuant to this Act, and credit institutions are required to disclose such data to clients at the request thereof.

(3¹) A credit institution is required to inform a client of the dangers related to the taking of loans.

(4) At the request of a client, a credit institution is required to provide the client with information concerning the sizes of the holdings that shareholders with qualifying holdings have in the share capital of the credit institution, and information concerning the managers of the credit institution.

(5) The list of transactions executed or services provided by a credit institution, the general terms and conditions for relationships between the credit institution and a client thereof (hereinafter general terms and conditions), interest rates and service charges shall be disclosed on the web page of the credit institution and at a place in the client service area of the credit institution. Clients shall have the right to request corresponding explanations and instructions from the credit institution.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(6) For the purposes of this Act, the general terms and conditions are a document which contains standard conditions applicable to all clients of a credit institution and which provides the general principles for relationships between the credit institution and clients, the procedure for communication between the credit institution and clients and general terms and conditions for transactions between clients and the credit institution. The general terms and conditions shall foresee, among other, the procedure and terms for settlement of disputes between the client and the credit institution and specify the contact information of the competent supervisory authority where the client can file a complaint against the activities of the credit institution.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

(7) The general terms and conditions shall be approved, amended or annulled by the management board of the credit institution. Amendments to the general terms and conditions shall be displayed in a visible place in the client service area of the credit institution for at least fifteen days before the amendments enter into force. Application of the general terms and conditions to relationships between the credit institution and a client shall be provided by a written agreement between the credit institution and the client.

(8) The assets of a client in a credit institution may be seized or confiscated or a claim for payment may be made thereon only pursuant to the procedure prescribed by law.

(9) Credit institutions are free to decide whom to serve or whom not to serve unless otherwise provided for by law.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(10) A credit institution that is engaged in the issue of electronic money is required to adhere to the provisions of subsections 6 (3), (4) and (6) and § 63 of the Payment Institutions and Electronic Money Institutions Act.

[RT I, 08.07.2011, 6 - entry into force 18.07.2011]

(11) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]

(12)) If the credit institution is a PRIIP manufacturer specified in Article 4 (3) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 09.12.2014, pp. 1–23), or a person selling the PRIIPs for the purposes of points 4 and 5 of the same Article or makes recommendations on such product, the credit institution is required to follow the requirements provided for in the specified regulation.

[RT I, 22.02.2017, 1 - entry into force 01.01.2018]

§ 89¹. Notification of client upon conclusion of investment deposit transactions agreement and assessment suitability thereof

(1) If the agreement concluded about deposit transaction specified in clause 6 (1) 1) of this Act includes investment risk, the credit institution is required to notify the client before the conclusion of the agreement about:

- 1) all the charges related to deposit, including the risk premiums and the methods for calculation thereof;
- 2) the interest rate paid and earnings gained on the amount of the deposit, including the methods of calculating the interest and the procedure of payment of interest;
- 3) the term of agreement and the extension thereof;
- 4) the options of the early termination of the agreement, including the charges therefor.

(2) For the purposes of this Act an investment risk deposit (hereinafter investment deposit) is a time deposit with the interest or risk premium that is fully or partially subject to the value of a security, index, goods, deposit, currency, other instrument or tangible or intangible non-replaceable assets or their combination or the underlying assets or the change thereof. Variable rate deposits, whose rate of return is directly related to the interest rate index, such as Euribor or Libor, are not deemed to be an investment deposit.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

- (3) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]
- (4) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]
- (5) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]
- (6) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]
- (7) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]
- (8) [Repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]

§ 89². Business account

(1) A credit institution may enter into a contract with a natural person for maintenance of the business account under the conditions provided for in the Simplified Business Income Taxation Act.

(2) The provisions of the Law of Obligations Act with regard to the payment account shall be applied to the business account with the specifications provided for in the Simplified Business Income Taxation Act.

(3) A credit institution is required to keep record of crediting, debiting and bookings on the business account.
[RT I, 07.07.2017, 2 - entry into force 01.01.2018]

Chapter 8 DISCLOSURE AND REPORTING

[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 90. [Repealed - RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 91. Requirements for reports

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) Eesti Pank shall establish:

- 1) for credit institutions the requirements for contents, periodicity, procedure and terms for submission of the consolidated and individual reports;
- 2) the format for forwarding the supervisory reports established on the basis of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- 3) for credit institution of a foreign state whose branch is established in Estonian, the contents, periodicity, procedure and terms for submission of reports concerning their activities in Estonia.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1¹) A credit institution is required to prepare accounting reports concerning three, six, nine and twelve months of the current financial year (hereinafter interim accounting reports) in conformity to the international standards for financial reporting approved by the European Commission pursuant to the procedure provided by Regulation No 1606/2002/EC of the European Parliament and of the Council on the application of international accounting standards (OJ L 243, 11.09.2002, pp.1-4).

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1²) The period of regular reports submitted to the Financial Supervision Authority (hereinafter the supervisory report) is a month, quarter or half-year. The supervisory report shall be submitted by the fifth, tenth or fifteenth working day after the end of the reporting period or within one month after the end of the reporting period unless otherwise provided for in Regulation (EU) No 575/2013 of the European Parliament and of the Council or legislation established on the basis thereof.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1³) in addition to the provisions of subsection (1) of this section the Financial Supervision Authority shall have the right, on the basis of Regulation (EU) No 1093/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, to require additional periodic and single reports, including concerning shorter periods, from a credit institution and a credit institution of a foreign state specified in clause (1) 3) of this section. The Financial Supervision Authority shall determine the contents, format and terms for submission for additional reports.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) In order to perform duties arising from Eesti Pank Act, Eesti Pank shall have the right to demand that credit institutions submit additional reports on a regular basis. The reporting form shall be established by Eesti Pank.

§ 92. Disclosure of reports and other information

(1) A credit institution is required to publish the annual report, the proposal and decision for profit distribution or covering the losses and the sworn auditor's report within two weeks after the general meeting of the shareholders has taken place but no later than within four months after the end of the financial year on its website and make them accessible for the public at the address of the credit institution, and in all its places of business.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) Eesti Pank may establish additional requirements for disclosure of reports and information.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2¹) The Financial Supervision Authority may require disclosure of information provided for in Part 8 of the Regulation (EU) No 575/2013 of the European Parliament and of the Council more frequently than once a year and determine the terms for disclosure thereof.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) A credit institution is required to disclose the interim accounting reports within two months after the end of the corresponding reporting period.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3¹) A credit institution shall make available on the website:

- 1) annual reports for at least five last years;
- 2) interim accounting reports for at least last three years;
- 3) the procedure for electing the management board of the credit institution and the principles of diversity of the composition of the directing bodies, including the requirements for managers of a credit institution;
- 4) information on how a credit institution meets the requirements arising from this Act for directing bodies and managers of a credit institution and remuneration thereof and for the internal audit system.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) A credit institution whose parent undertaking is a foreign credit institution or a financial holding company shall also disclose on its website, in addition to the documents provided for in subsection (1) of this section, the consolidated annual report of the parent undertaking which has been prepared in conformity with the legislation of the country of location of the parent company.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4¹) A credit institution that is subject to the consolidated supervision of the Financial Supervision Authority together with the parent undertaking shall disclose the consolidated annual report of the parent undertaking of the consolidation group of the credit institution in addition to the documents provided for in subsection (1) of this section.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) A branch of a foreign credit institution shall disclose the latest possible reports of the foreign credit institution which have been prepared in conformity with the legislation of the country of its location and translated into Estonian.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) If a material error becomes evident in a report which has been disclosed, the public shall be informed of the error at the earliest opportunity on the website and the corrected report shall be disclosed in a manner provided for in subsection (1) of this section.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(7) A credit institution shall disclose the following information on the date and location of the disclosure of the annual report:

- 1) the legal structure and organizational structure of a credit institution and its consolidation group;
- 2) the description of its general management principles;
- 3) the names of natural and legal persons who have a significant relationship with the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(8) A credit institution shall disclose in the annual report or on the date and location of the disclosure of the annual report the following information for contracting states and third states where the place of business of a credit institution is located:

- 1) the geographical location, business name and nature of business;
- 2) turnover or sales revenue;
- 3) the number of employees on the full-time basis accounting;
- 4) pre-tax profit or loss;
- 5) income tax or other tax on profit or loss payable;

6) the amount of state support received.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(9) Information specified in subsections (4), (4¹), (7) and (8) of this section may be disclosed as a reference to the location where the specified information is disclosed.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(10) A credit institution is required to disclose the rate of return on assets in the annual report. The rate of return on own funds is calculated as net profit and total assets ratio.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(11) The Financial Supervision Authority may require the disclosure of the structure of the organization and undertakings in the group by the parent company of the consolidation group of the credit institution once a year on the date and location of the disclosure of the annual report.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(12) The Financial Supervision Authority may require the disclosure of information by a credit institution through other communication tools and places in addition to the website of the credit institution.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 92¹. Information concerning risk management, own funds and capital adequacy subject to disclosure

[Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 92². Information concerning remuneration submitted to Financial Supervision Authority

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) Together with the annual report a credit institution is required to submit to the Financial Supervision Authority the information by business lines about the persons, whose remuneration makes up the total amount of remuneration in the credit institution of at least one million euros per year, including the number of such persons and the duties of each person, basic salary, performance pays and pension contributions made by the credit institution.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) The Financial Supervision Authority shall analyse the implementation of the principles of remuneration in the credit institution and the data submitted pursuant to subsection (4) of this section and forward the specified data to the European Banking Authority.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 93. Audit

(1) Annual accounts of a credit institution and the data provided for in subsection 92 (8) of this Act shall be audited. The sworn auditor's opinion concerning the data provided for in subsection 92 (8) of this Act shall be disclosed at the place for the disclosure of audited data.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) In the course of auditing a credit institution, a sworn auditor shall audit a report and submit to the Financial Supervision Authority the report in which it is required to express opinion about the following fields:

- 1) compliance with the requirements established for own funds;
- 2) adequacy and efficiency of the proceedings of the internal control system;
- 3) the security of the information system of the credit institution

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 94. Appointment of auditor

(1) A trustworthy person with adequate expertise and experience for auditing credit institutions may be appointed sworn auditor of a credit institution.

(2) [Repealed - RT I, 30.06.2017, 1 - entry into force 01.07.2017]

(3) A sworn auditor shall be appointed by a court of the location of the credit institution on the basis of a petition by the Financial Supervision Authority if:

- 1) the general meeting has not appointed a sworn auditor;
- 2) the sworn auditor appointed by the general meeting refuses to conduct an audit;
- 3) according to the opinion of the Financial Supervision Authority, the sworn auditor is no longer trustworthy.

(3¹) Shareholders or members of a credit institution who jointly represent at least five per cent of the share capital or voting rights of the credit institution may request the court to replace the audit firm of the credit institution appointed by the general meeting pursuant to the procedure provided for in § 329¹ of the Commercial Code.

[RT I, 30.06.2017, 1 – entry into force 01.07.2017]

(4) The authority of a court-appointed sworn auditor shall continue until the appointment of a new sworn auditor by the general meeting.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 95. Notification obligation of auditor

(1) A sworn auditor is required to inform the Financial Supervision Authority promptly in writing of the facts or decisions that have become known to the sworn auditor in the course of his or her professional activities and which result or may result in:

- 1) material violation of legislation regulating the activities of credit institutions;
- 2) material violation of the conditions which are the basis for the grant of authorisation to the credit institution;
- 3) interruption of the activities of the credit institution or a subsidiary thereof;
- 4) an adverse or qualified sworn auditor's report or refusal thereof with regard to the annual accounts or consolidated annual accounts of the credit institution;
- 5) a situation, or the risk of a situation arising, in which the credit institution is unable to perform its duties.

(2) By submission of the data to the Financial Supervision Authority the obligation of the non-disclosure of data imposed on the sworn auditor by the legislation or an agreement entered into shall not be violated. The data shall be submitted concurrently to the management body of the credit institution unless there is a good reason not to do this.

(3) If a sworn auditor audits an undertaking that has significant relationships with the credit institution, which have arisen as a result of the fact that the said undertaking and the credit institution are audited by one and the same person, the sworn auditor is required to notify the financial Supervision Authority immediately in writing of all the facts specified in subsection (1) of this section which have become known to him or her in the course of professional activities in an undertaking which is in significant relationships with the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

Chapter 9 SUPERVISION

§ 96. Bases and duties of supervision

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) Supervision over the activities of credit institutions, financial holding companies, mixed financial holding companies and mixed-activity companies shall be exercised by the Financial Supervision Authority on the basis and in the procedure provided for in Regulation (EU) No 575/2013 of the European Parliament and of the Council, Financial Supervision Authority Act and this act and the legislation issued on the basis thereof.

(2) The Financial Supervision Authority may involve independent experts in the conduct of supervision, where necessary.

(3) The Financial Supervision Authority shall review applications for authorisation for activities, merger or division and the authorisation for the use of internal methods submitted by credit institutions, or other applications and accompanying documents prescribed in Regulation (EU) No 575/2013 of the European Parliament and of the Council or in this Act, and shall verify and evaluate the compliance thereof with the requirements provided for in Regulation (EU) No 575/2013 of the European Parliament and of the Council or in this Act.

(4) The Financial Supervision Authority shall monitor on a regular basis the activities and situation of credit institutions, or where essential, also the activities and situation of financial holding companies and mixed financial holding companies and shall verify the compliance with the prudential requirements and authorisation for the use of internal methods, as well as the compliance of activities and situation with other requirements, which are provided for in Regulation (EU) No 575/2013 of the European Parliament and of the Council, this Act and legislation issued on the basis thereof,

(5) The Financial Supervision Authority shall constantly monitor and assess whether the strategies, organisation of management, procedures, including the procedures applicable in accounting, reporting systems and internal control mechanisms implemented in a credit institution are in compliance with the requirements of Regulation (EU) No 575/2013 of the European Parliament and of the Council, this Act or other legislation, in order to reliably assess risks, including systemic risk and risks that have become evident in the course of stress test, and shall assess whether liquidity and own funds are adequate for reliable management of a credit institution and for coverage of risks. The Financial Supervision Authority shall assess at least once annually whether all the risks of the credit institutions are, according to provisions of subsection 63¹(1) of this Act, adequately covered with own funds.

[RT I, 21.12.2010, 6 - entry into force 31.12.2010]

(6) The Financial Supervision Authority shall assess, among other, the credit institution's:

- 1) conditions of making securitized transactions;
- 2) adjustments of the values of positions held for the purpose of trading;
- 3) interest rate risk arising from activities unrelated to trading and shall implement necessary measures if the economic value of a credit institution decreases due to the change of 200 basis points or due to other similar change treated in the guide of the European Banking Authority by more than 20 percentage points of its own funds;
- 4) exposure to leverage risk which is reflected by indicators of excessive financial leverage, including the financial leverage ratio.

(7) The supervision of the Financial Supervision Authority includes the organisation of management of the persons specified in subsection (1) of this section, ability of the members of the directing bodies to perform their duties, including the diversity of the composition of the directing bodies and the compliance with the principles of remuneration of managers. For the conduct of supervision the Financial Supervision Authority shall collect data pursuant to Regulation (EU) of the European Parliament and of the Council No.575/2013 Article 435 (2) (c); forward the collected data to the European Banking Authority and use them for the assessment of the implementation of principles of diversity.

(8) The Financial Supervision Authority conducts supervision over transactions between credit institutions and their parent companies which are mixed-activity holding companies, and between credit institutions and other subsidiaries of such parent companies, with the objective, among other, to prevent damage to the financial situation of the credit institution.

(9) The Financial Supervisory Authority shall take account of the nature, complexity, extent and importance of the activities of the credit institution and the impact of the corresponding mechanisms of diversification and management of risks, geographic location of risks and the business model of the credit institution.

(10) The Financial Supervisory Authority is required to, taking account of its duties and possibilities, plan, where possible, supervisory procedures (hereinafter supervisory plan) for at least one year beforehand with regard to credit institutions, including subsidiaries and branches of an Estonian credit institution located in another contracting state.

(11) The Financial Supervisory Authority is required to prepare the supervisory plan at least for the undertakings having systemic risk and in the case the results of the stress test reflect substantial risks or refer to violation of Regulation (EU) No 575/2013 of the European Parliament and of the Council, or other legislation.

(12) Upon the increase of the risks of persons specified in subsection (1) of this section, including upon the increase of systemic risk, the Financial Supervision Authority shall:

- 1) increase the number or frequency of on-site inspections or extend the duration thereof;
- 2) require submission of reports additionally or more frequently;
- 3) control additionally or more frequently the business plan, implementation of the strategy or business transactions;
- 4) monitor specific risks, the realization of which is likely, on the basis of a special plan;
- 5) apply other measures provided for in this Act.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 97. Scope of supervision

(1) The supervision activities of the Financial Supervision Authority shall cover:

- 1) all Estonian credit institutions;
- 2) the subsidiaries, branches and representative offices of Estonian credit institutions in foreign states unless otherwise agreed with a financial supervision authority of a foreign state;
- 3) the subsidiaries of Estonian credit institutions located in foreign state that are credit institutions unless supervision is conducted by a financial supervision authority of a foreign state or it is respectively agreed with the financial supervision authority of a foreign state;
- 4) subsidiaries of credit institutions of a foreign state, located in Estonia, that are credit institutions, branches and representations unless otherwise agreed with the corresponding financial supervision authority of a foreign state.

(2) The Financial Supervision Authority shall exercise supervision on a consolidated basis if:

- 1) the Estonian credit institution is a credit institution operating in Estonia as parent undertaking pursuant to Article 4(1) (28) of Regulation (EU) No.575/2013 of the European Parliament and of the Council;
- 2) the parent undertaking of the Estonian credit institution is a credit institution operating in the contracting state as parent undertaking pursuant to Article 4(1) (29) of Regulation (EU) No.575/2013 of the European Parliament and of the Council;
- 3) the parent undertaking of an Estonian credit institution is a financial holding company or a mixed financial holding company operating in Estonia as parent undertaking pursuant to Article 4(1) (30) or (32) of Regulation (EU) No.575/2013 of the European Parliament and of the Council;
- 4) the parent company of an Estonian credit institution is an Estonian financial holding company or a mixed financial holding company operating in the contracting state as parent undertaking pursuant to Article 4(1) (31) or (33) Regulation (EU) No.575/2013 of the European Parliament and of the Council;
- 5) the parent undertaking of an Estonian credit institution and the parent undertaking of a credit institution or investment firm authorized in a foreign state are one and the same Estonian financial holding company or mixed financial holding company operating in Estonia or the contracting state.
- 6) the parent undertakings of an Estonian credit institution and a credit institution or investment firm authorized in a foreign state, are several financial holding companies or mixed financial holding companies, whose head offices are located in different contracting states, whereby one credit institution or investment firm is located in each of the states and the Estonian credit institution has the largest balance sheet total of the credit institutions and investment firms within the consolidation group.
- 7) a financial holding company or mixed financial holding company is the parent undertaking of an Estonian credit institution and of a credit institution or investment firm authorized in a foreign state and none of the credit institutions or investment firms within the consolidation group has been authorized in the contracting state where the parent company has been founded, and the Estonian credit institution has the largest balance sheet total of the credit institutions and investment firms within the consolidation group.

(3) If the parent undertaking of the credit institution is a mixed financial holding company, supervision over the mixed financial holding company shall be executed on the basis of and in the procedure provided for in Chapter 9¹ of this Act.

(4) If the Financial Supervision Authority or financial supervisory authority of a contracting state does not exercise consolidated financial supervision over the credit institution, whose parent undertaking is a third country credit institution, investment firm or financial holding company, the Financial Supervision Authority shall verify, on its own initiative, at the request of the parent undertaking or company belonging to the consolidation group that has been authorized in the contracting state and is subject to financial supervision, the equality of the consolidated supervision executed by the financial supervision authority of the third state with the supervision based on the principles provided for in Directive 2013/36/EU of the European Parliament and of the Council and Part I Title 2 Chapter 2 of Regulation (EU) No.575/2013 of the European Parliament and of the Council.

(5) If on the joint opinion of the Financial Supervision Authority and other financial supervision authorities of relevant contracting states, the supervision exercised over the consolidation group by the financial supervision authority of the third country is not equivalent to consolidated supervision conforming to the requirements established by the EU legislation, financial supervision over the consolidation group of the credit institution shall be exercised by the Financial Supervision Authority or the financial supervision authority of another relevant contracting state under an agreement between them. The European Banking Authority shall be consulted before giving a joint opinion.

(6) Supervision over the activities of a branch, founded in Estonia, of a credit institution of another contracting state shall be exercised by the financial supervision authority of the home state of the credit institution, including on-site inspection if the Financial Supervision Authority has been notified thereof beforehand.

(7) The supervision activities of the Financial Supervision Authority cover monitoring the liquidity and reporting on the branch specified in subsection (6) of this section in co-operation with the financial supervision authority of the home state of the credit institution.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 97¹. Supervision over credit institutions that have founded branches in foreign states and credit institutions providing cross-border services

(1) If a credit institution whose branch is founded in a foreign state or which provides cross-border services in a foreign state violates the requirements of legislation, the Financial Supervision Authority shall immediately apply measures for termination of the violation or reduction of the corresponding risk. The Financial Supervision Authority shall inform the financial supervision authority of the foreign contracting state of the measures taken.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) The Financial Supervision Authority shall immediately inform the financial supervision authority of the foreign state where the branch of the credit institution is founded or where the credit institution provides cross-border services, of the revocation of an activity licence and withdrawal of authorisation for the foundation of a branch in a foreign state, as well as of precepts specified in subsection 20¹(8) or 20⁴(8) of this Act.

(3) A branch of a credit institution shall, at the request of a foreign financial supervision authority, submit periodically information which is necessary for the purpose of statistics or for the exercise of supervision over the activities of the branch in compliance with the requirements of Regulation (EU) No.575/2013 of the European Parliament and of the Council, including the determination of the importance of the branch.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) The Financial Supervision Authority shall monitor the branch of a credit institution founded in a foreign state on a regular basis and verify the compliance with the prudential ratios, including the requirements related to liquidity, solvency, concentration of risks, internal control system and guarantee of deposits, and operation of internal rules procedures in compliance with Regulation (EU) No.575/2013 of the European Parliament and of the Council.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) Upon preparation of the regular monitoring plan with regard to the branch of a credit institution founded in another contracting state the Financial Supervision Authority shall take account of the data and conclusions concerning the financial stability of the contracting state.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 97². Supervision over branches and representative offices of foreign credit institutions founded in Estonia and credit institutions providing cross-border services in Estonia

(1) The Financial Supervision Authority may require on a regular basis that all foreign credit institutions whose branch is founded in Estonia submit reports, additional information and documents that are necessary for the statistics or for getting other information or for exercise of supervision over the credit institution in compliance with the requirements of this section, including the determination of the significant importance of the branch or monitor the compliance with the liquidity requirements.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) A credit institution whose branch or representative office is founded in Estonia or which provides cross-border services in Estonia and whose activity licence has been suspended or revoked by a financial supervision authority of the contracting state shall not continue to operate or provide cross-border services in Estonia. The Financial Supervision Authority is required to introduce measures in order to prevent any further action of the credit institution in Estonia and ensure the interests of the depositors.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) If a third country credit institution or its branch located in Estonia violates the requirements provided for in this Act or other legislation, the Financial Supervision Authority may apply the measures provided for in §§ 96-110 of this Act and the sanctions provided by this Act in order to terminate the violation or revoke the authorisation for foundation of the branch.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) The Financial Supervision Authority may require the credit institution of the contracting state which has founded a branch in Estonia or provides cross-border services in Estonia to terminate violation of the requirements provided for in Regulation (EU) of the European Parliament and of the Council No.575/2013, Acts or legislation issued on the basis thereof, including suspend conclusion of new transactions or performance of acts.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4¹) If the Financial Supervision Authority has identified that the activities of the branch of the credit institution of the contracting state founded in Estonia or a credit institution providing cross-border services in Estonia are not in compliance with the requirements provided for in Regulation (EU) No.575/2013 of the European Parliament and of the Council, Acts or legislation issued on the basis thereof or a material risk has arisen, the Financial Supervision Authority shall notify the financial supervision authority of the home state of the credit institution thereof.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4²) The Financial Supervision Authority may, in individual cases and where it is appropriate and necessary for ensuring the financial stability in Estonia, conduct on-site inspection in the Estonian branch of the credit institution of a contracting state and require information about the activities of the branch for the supervisory purpose, consulting previously with the financial supervision authority of the contracting state. The Financial Supervision Authority shall inform the credit institution of a contracting state of the information collected and of the conclusions that are relevant for assessment of the risks of the said credit institution or which concern the financial stability. The Financial Supervision Authority shall inform the credit institution of the reasons for the implemented sanctions and limitations.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(6) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(7) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(8) When the facts that might pose an immediate threat to the financial stability become apparent, the Financial Supervision Authority may, in order to protect the collective interests of the depositors, investors and other clients or the financial stability, apply supervisory measures provided for in this Act and other legislation with regard to a credit institution of the contracting state on the basis of the principle of proportionality, including suspend partially or fully conclusion of transactions and performance of acts, while respecting the principle of equal treatment. The Financial Supervision Authority may implement the measures provided for in the first sentence of this subsection with regard to the credit institution provisionally until the implementation of the rehabilitation measures of the financial supervision authority of the contracting state.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(9) The Financial Supervision Authority shall immediately inform the European Commission, the European Banking Authority and the financial supervision authority of the relevant contracting state of application of the measure specified in subsection (6) or (8) of this section.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 97³. Rights and obligations of participants in supervision proceedings of credit institutions

(1) If necessary, the Financial Supervision Authority shall explain the rights and obligations of a participant in the proceedings in supervision proceedings to the participant in the proceedings.

(2) Participants in the proceedings have the right to access information concerning them which is collected by the Financial Supervision Authority and to copy and make extracts of such information. The Financial Supervision Authority has the right to refuse to provide such information if this damages or is likely to damage the justified interests of third persons, or if examining the data damages attainment of the objectives of the supervision or ascertainment of the truth in a criminal matter.

(3) In supervisory proceedings, a participant in a proceeding has the right to submit questions to witnesses through the Financial Supervision Authority. The Financial Supervision Authority has the right to refuse to forward questions to witnesses with good reason.

(4) If the Financial Supervision Authority and financial supervision authorities of other relevant contracting state have agreed, taking account of the importance of the credit institution in different states, that they appoint the financial supervision authority of another contracting state for conduct of the consolidated supervision of consolidated groups in the cases provided for in clauses 97 (2) 5), 6) or 7) of this Act, the parent credit institution, financial holding company or mixed financial holding company operating in the contracting state as parent undertaking or a credit institution with the largest balance sheet amount shall be given an opportunity to submit their position with regard to this decision.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(5) The Financial Supervision Authority shall inform the relevant participant in the proceedings about the agreements on the transfer of supervisory duties, concluded with the financial supervisory authority of another contracting state provided in subsection 46 (8) or clause 46¹(1) 3) of the Financial Supervision Authority Act, including the accurate conditions of such transfer, after the receipt of the opinion from the European Banking Authority or the European Securities Market Authority.
[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

§ 98. [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 99. Rights of Financial Supervision Authority upon receipt of information

(1) For the purpose of performing supervision activities, the Financial Supervision Authority shall have the right to require reports, free of charge information, documents and oral or written explanations concerning facts relevant to the exercise of supervision from the following persons:
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

1) credit institutions, managers and members of staff of credit institutions;

2) mixed financial holding companies, financial holding companies, mixed-activity holding companies and other companies within the same consolidation group as the credit institution, managers and members of staff thereof;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

2¹) get, where necessary, the agenda of the meetings of the directing bodies and committees of the credit institution and the documents prepared concerning the issues on the agenda and the results of the audit of the activities of the directing bodies and of other assessment of the performance;

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

3) shareholders and members of credit institutions;

4) in case of justified need, third persons;

5) liquidators and trustees in bankruptcy of credit institutions;

6) state authorities, local government agencies and chief and authorised processors of national databases;

7) a subsidiary of a foreign credit institution, the head or an employee of a subsidiary of a foreign credit institution.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

(2) For the purposes of supervisory activities, the Financial Supervision Authority has the right to:

1) carry out on-the-spot verifications of companies belonging to the consolidation group of a credit institution in order to verify information submitted to the Financial Supervision Authority, and to demand submission of information and documents necessary for the exercise of supervision;

2) demand submission of any information from a credit institution needed to verify compliance with prudential ratios and the ratio of liquid assets and current liabilities, liquid, including on the consolidated basis;

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

3) receive information from and cooperate with internal audit units and revision committees of credit institutions.

(3) If necessary, the Financial Supervision Authority may require that a person appear at the offices of the Financial Supervision Authority at the time designated by the Financial Supervision Authority in order to provide explanations.

(4) If necessary, the Financial Supervision Authority may issue an order whereby the Authority designates a term for the performance of obligations provided for in subsections (1)-(3) of this section.

(5) For purposes of exercising supervision, the Financial Supervision Authority has the right to obtain information concerning a credit institution from third parties without informing the credit institution of transmission of such information. The third party is required not to inform the credit institution of transmission of such information.

(6) If in the process of administrative proceedings, a participant in the proceedings fails to appear upon a summons by the Financial Supervision Authority without a legal impediment, the Financial Supervision Authority has the right to:

1) impose penalty payment on the participant in the proceedings;

2) impose compelled attendance by a police escort.

§ 99¹. Grounds for refusal to provide explanations

A person who has the obligation to provide information may refuse to provide information to the Financial Supervision Authority on the grounds provided in § 71 or § 73 of the Code of Criminal Procedure.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 100. Organisation of supervision

(1) Supervision shall be organised on the basis of reporting and other information subject to submission by credit institutions and consolidation groups thereof and the Financial Supervision Authority has the right to conduct on-the-spot verifications of credit institutions, companies belonging to consolidation groups of credit institutions and branches of foreign credit institutions.

(2) The Financial Supervision Authority shall carry out on-the-spot-verifications in credit institutions and companies that are parent companies of consolidation groups at least once every two years.

(3) The Financial Supervision Authority shall conduct stress tests in the credit institution at least once annually in the cases relevant for the performance of the duties provided for in subsection 96 (5) of this Act.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(4) The Financial Supervision Authority shall assess on a regular basis, but at least every three years, whether the use of internal methods of credit institution in the economic activity, including the implementation thereof for new financial services or products is in compliance with the requirements for authorisation for use of internal methods provided for in Regulation (EU) of the European Parliament and of the Council No.575/2013.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 101. On-site inspection

(1) In order to exercise supervision, the Financial Supervision Authority has the right to organise on-site inspection at the seat or place of business of a credit institution, a company belonging to the consolidation group of a credit institution or a subsidiary of a foreign credit institution.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

- (2) An on-site inspection shall be carried out if:
- 1) there is need to verify submitted information;
 - 2) the Financial Supervision Authority suspects that the provisions provided by or on the basis of legislation specified in this Act or in subsection 2 (1) of the Financial Supervision Authority Act have been violated;
 - 3) there is need to verify, based on a corresponding request of a supervisory authority of a contracting state, information obtained from a contracting state credit institution, financial institution, ancillary undertaking of a credit institution, or mixed-activity holding company or subsidiary thereof;
 - 4) there is need to perform other supervisory duties.

(3) In order to carry out an on-site inspection, the Financial Supervision Authority shall issue an order which sets out the purpose, extent, duration of the period and time of the inspection. The order shall be delivered to the credit institution or company belonging to the consolidation group of the credit institution (hereinafter person being inspected) at least three working days before the on-site inspection is commenced, unless giving such notice damages attainment of the objectives of the inspection. An on-site inspection shall be carried out by an employee authorised by the Financial Supervision Authority (hereinafter inspector) unless otherwise prescribed in this Act.

- (4) During on-site inspection, an inspector has the right to:
- 1) enter all premises, in compliance with all security requirements in force with regard to the person being inspected;
 - 2) request existence of necessary working conditions and use a separate room necessary for their work;
 - 3) study documents and media necessary for exercising supervision, make excerpts, transcripts and copies thereof and monitor the work processes without restrictions;
 - 4) demand oral and written explanations from the managers and members of staff of the person being inspected. Explanations shall be recorded if necessary or if the person providing the explanations so requests.

(5) The management of a person being inspected is required to appoint a competent representative in whose presence the inspection is carried out and who shall provide the inspector with documents and other information necessary for the performance of his or her duties, including the sworn auditor's report concerning the reports of the person being inspected and special reports of the auditor, and shall provide necessary explanations with regard to such documents and information.

[RT I 2010, 9, 41 - entry into force 08.03.2010]

(6) In the case specified in clause (2) 3) of this section, the Financial Supervision Authority may authorise a financial supervision authority of a contracting state or an auditor or expert appointed thereby to carry out on-site inspection.

§ 101¹. Report concerning on-site inspection

(1) An inspector is required to prepare a report concerning the results of the on-site inspection within two months after completion of the on-site inspection and the Financial Supervision Authority shall promptly deliver the report to the person being inspected.

(2) [Repealed - RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(3) After reviewing the written explanations of the person being inspected, but not later than within four months after the on-site inspection is completed, the Financial Supervision Authority shall prepare a final report which is delivered to the person being inspected.

(4) In the event of disagreement with the facts set forth in a report, the person being inspected has the right to append a written dissenting opinion to the report.

(5) If, after the on-site inspection or the written explanations of the person being inspected, additional circumstances become evident or the Financial Supervision Authority obtains additional information, the term for preparation of the report of the Financial Supervision Authority or a final report specified in subsection (3) of this section may be extended by up to two months, and the new term for preparation of the report or the final report shall be communicated to the person being inspected and the reason for extension of the initial term shall be indicated.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 101². Specific supervision

(1) Specific supervision is a set of special measures implemented in supervision proceedings carried out by the Financial Supervision Authority and intended to ensure the stability of the financial system (hereinafter specific supervision), on the basis of which the enhanced on-site inspection is executed with regard to the activities of a credit institution of Estonia or its subsidiary established in a contracting state. The purpose of specific

supervision is to avoid the creation or continuation of insolvency or other business continuity disorders of a credit institution and to protect depositors and other creditors upon maintenance of their resources.

(2) The Financial Supervision Authority has the right to decide on implementation of specific supervision with regard to a subsidiary of a credit institution of a third state established in Estonia unless otherwise agreed with the supervision authority of the third state.

(3) Upon implementation of specific supervision the provisions of §§ 101 and 101 1 concerning the on-site inspection are applied unless otherwise provided by this section.

(4) The Financial Supervision Authority may use specific supervision with regard to a credit institution if an act or omission of a credit institution alone or in conjunction with other factors may endanger the stability of the financial system of Estonia and the Financial Supervision Authority has a justified suspicion that:

- 1) a credit institution will fail to comply with the precept of the Financial Supervision Authority by the specified term, or
- 2) the management board of the credit institution has failed to comply with notification obligation provided in subsection 71 (5) or clause 108 (1) 6) of this Act.

(5) The supervision authority is an inspector who, in addition to other provisions of this Act, has the right to:

- 1) participate in the work of all the directing bodies and other committees or structural units prescribed in the structure of a credit institution;
- 2) call an extraordinary general meeting of the shareholders or members of a credit institution;
- 3) monitor on-site the transactions and acts carried out by a credit institution;
- 4) prohibit the performance of transactions by a credit institution without a prior written approval of the inspector;
- 5) check the security of the information technology systems and of the systems used for safekeeping of assets of clients and demand the introduction of additional security measures.

(6) Upon establishment of specific supervision the Financial Supervision Authority shall determine the term and extent of specific supervision and the powers of the inspector by implementing the rights specified in subsection (5) of this section.

(7) The duration of specific supervision shall not exceed six months.

(8) The provisions of subsection 101 (2) and the second sentence of subsection 101 (3) of this Act do not apply to implementation of specific supervision.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 102. Assessment and special audit in supervisory proceedings

(1) In order to clarify important matters that require specific expertise, the Financial Supervision Authority has the right to involve an expert in the supervision proceedings.

(2) The Financial Supervision Authority has the right to demand the conduct of a special audit if:

- 1) there is justified suspicion that the reports submitted to the Financial Supervision Authority or the public are misleading or inaccurate;
- 2) transactions have been concluded which may result or have resulted in significant damage to the credit institution, a company belonging to the consolidation group of the credit institution, or their depositors or other clients;
- 3) other important issues relevant to the financial situation of the credit institution or a company belonging to the consolidation group of the credit institution need additional clarification in the supervision proceedings.

(3) The Financial Supervision Authority shall involve an expert or, for a special audit, an auditor on its own initiative or at the request of a participant in the proceeding. The name of the expert or auditor and the reasons for involvement of the expert or auditor shall be communicated to a participant in the proceeding before involvement of the expert or auditor, unless proceedings regarding the matter need to be conducted quickly or communication of the information may impede attainment of the objectives of the assessment or special audit.

(4) If an expert or an auditor who performs a special audit ascertains facts relevant in the supervision proceedings and the Financial Supervision Authority did not directly assign the task of ascertaining these facts to the expert or auditor, the expert or auditor shall also provide his or her opinion or assessment with regard to the facts.

(5) An expert or an auditor who performs a special audit has the right to exercise the rights provided for in subsection 101 (4) of this Act only for the purpose of performance of the tasks assigned to him or her and make proposals to the Financial Supervision Authority and participants in proceedings for the submission of additional information and documents. An expert or an auditor who performs a special audit may exercise the rights provided for in clause 101 (4) 1) of this Act only with the permission or in the presence of the person being inspected. The expert is required to maintain the confidentiality of any confidential information that becomes known to him or her in connection with performance of the duties of an expert.

(6) Costs related to the conduct of an assessment or a special audit shall be covered from the budget of the Financial Supervision Authority. If an expert or auditor is involved at the request of a participant in the proceeding, the costs related to the conduct of an assessment or a special audit shall be covered by the participant in the proceeding.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 103. Precepts and other measures applied by Financial Supervision Authority

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(1) The Financial Supervision Authority shall have the right to issue a precept if:

1) upon the exercise of supervision violations have been discovered of this Act, the Financial Crisis Prevention and Resolution Act, Regulation (EU) No.575/2013 of the European Parliament and of the Council, Regulation (EU) No. 806/2014 of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.07.2014, pp. 1-90) or of the acts specified in § 2 or clause 6 (1) 7) of the Financial Supervision Authority Act or legislation issued on the basis thereof;

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

2) there is a need to prevent the offences specified in clause 1) of this section;

3) the risks taken by a credit institution may probably increase significantly within the following twelve months or other circumstances exist which endanger the activities of the credit institution, the interests of its clients or soundness the financial sector as a whole or may have such effect;

4) it is necessary in order to defend the interests of the clients of the credit institutions or to guarantee the transparency of the financial sector.

(2) If the credit institution is not in compliance with the requirements of the authorisation for the use of internal methods provided for in the Regulation (EU) No.575/2013 of the European Parliament and of the Council or the legislation issued on the basis thereof, the Financial Supervision Authority may revoke the authorisation for the use of internal method or alter the conditions for the use thereof, taking account of the areas of the requirements to be followed by the credit institution.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) The Financial Supervision Authority is entitled to apply measures specified in Article 24 of the Regulation (EU) No 1286/2014 of the European Parliament and of the Council. The Financial Supervision Authority shall publicise a notice concerning the decision made on the basis of the measures pursuant to the specified Article on its web page in accordance with Article 29 of the regulation.

[RT I, 22.02.2017, 1 - entry into force 01.01.2018]

§ 104. Rights upon issue of precepts

(1) The Financial Supervision Authority has the right, by issuing a precept, to:

1) prohibit a credit institution from concluding certain types of transactions or to restrict the volume thereof;

2) prohibit, wholly or partially, payment of dividends from the profit of a credit institution;

2¹) demand reduction of the performance pay of the management board members and staff of a credit institution, suspension of the payments thereof or repayment of the payments made if a basis provided in subsection 57²(7) of this Act exists.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

3) demand restrictions on the operating expenditures of a credit institution;

4) demand appropriate write-down of the assets of a credit institution in conformity to the requirements provided by this Act and legislation issued on the basis thereof;

[RT I 2006, 63, 467 - entry into force 01.01.2007]

5) require improvement of the ratio of liquid assets and short-term liabilities.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

6) demand from a credit institution which operates in a foreign state termination of the violation of requirements arising from legislation in force in a foreign state;

7) prohibit a credit institution of a contracting state from operating in Estonia or an Estonian credit institution from operating in a contracting state, or to prohibit such credit institution from providing cross-border services;

8) demand amendment of internal rules or rules of procedure of a credit institution and of the principles of remuneration, including establishment of additional suspensive conditions on payments of performance pay or parts thereof, restrict or prohibit payments of performance pay in the form of certain shares, share options or other similar rights;

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

9) demand that the supervisory board of a credit institution remove a member of the management board;

10) demand that the general meeting of a credit institution remove a member of the supervisory board if a basis provided in subsection 50 (1) of this Act exists;

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

- 11) make a proposal to the general meeting of a credit institution for replacement of an auditor;
 - 12) demand suspension of an employee of a credit institution from work;
 - 13) demand submission of a reorganisation plan for a credit institution;
 - 14) demand payment of a contribution prescribed by the Guarantee Fund Act;
 - 15) make other demands for compliance with legislation regulating the operation of a credit institution.
 - 16) set a term for bringing the limitations on concentration of exposures into conformity with the requirements.
- [RT I 2006, 63, 467 - entry into force 01.01.2007]
- 17) make a proposal to amend or supplement the organisational structure of a credit institution;
- [RT I, 21.12.2010, 3 - entry into force 01.01.2011]
- 18) demand carrying out a stress test or other similar sensitivity analysis.
- [RT I, 21.12.2010, 3 - entry into force 01.01.2011]
- 19) require improvement of the models of internal methods;
- [RT I, 09.05.2014, 2 - entry into force 19.05.2014]
- 20) require disclosure of the information prescribed in legislation.
- [RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(2) According to the provisions of subsection 63¹(1) of this Act if all the risks of a credit institution are not adequately covered by own funds or risk management has not been organised in conformity with the requirements of this Act and legislation established on the basis thereof, the Financial Supervision Authority shall have the right to issue a precept to require own funds in excess of the claims provided for in §§ 86⁴⁴ - 86⁴⁹ and Regulation (EU) of the European Parliament and of the Council No.575/2013.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

(3) The Financial Supervision Authority has the right to grant approval to a credit institution not to meet the prudential ratios within a period of time prescribed by a precept if this is necessary for implementation of the reorganisation plan of a credit institution related to ensuring the financial stability. The period of time specified above cannot be longer than six months.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(4) The Financial Supervision Authority shall have the right to issue a precept for determination of the additional liquidity requirement, taking account of the business model of the credit institution, organisation of risk management, including the organization of the liquidity risk management, and the supervisory assessment given to the adequacy of own funds and the systemic liquidity risk in the financial market pursuant to the provisions of subsection 96 (5) of this Act.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 104¹. Penalty payment

(1) In the event of a failure to comply with or inappropriate compliance with the precept issued pursuant to this Act or another administrative act, the Financial Supervision Authority shall have the right to impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act.

(2) In the event of a failure to comply with or inappropriate compliance with an administrative act, the upper limit for a penalty payment is, in the case of a natural person, up to 5,000 euros for the first occasion and in the subsequent cases up to 50,000 euros to enforce the performance of one and the same obligation but no more than 5,000,000 euros altogether, and in the case of a legal person, up to 32,000 euros for the first occasion and up to 100,000 euros in each subsequent occasion to enforce the performance of one and the same obligation but no more than for 10% of the net annual turnover of the whole legal person, including gross income which, in compliance with Regulation (EU) No.575/2013 of the European Parliament and of the Council, consists of commissions and fees and interest and other similar income.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 105. Calling of and participation in meetings of directing bodies of credit institutions

(1) The Financial Supervision Authority has the right to issue a precept in order to:

- 1) call a meeting of the supervisory board or management board of a credit institution or to call a general meeting of a credit institution;
- 2) include an issue on the agenda of a meeting of the supervisory board or management board or the general meeting if this is necessary according to the opinion of the Financial Supervision Authority.

(2) The Financial Supervision Authority has the right to send representatives to a meeting who have the right to present positions and make proposals and demand the recording thereof in the minutes of the meeting.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 106. Invalidation of resolutions of directing bodies of credit institutions

On the basis of a petition from the Financial Supervision Authority, a court of the seat of a credit institution may declare invalid a resolution of the general meeting, supervisory board or management board of a credit institution which is in conflict with an Act, legislation issued on the basis thereof or the articles of association of the credit institution, if the petition is submitted within three months after adoption of the resolution.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 107. Reorganisation plan of credit institution

(1) If a credit institution fails to comply with prudential ratios or maintain the necessary ratio of liquid assets to current liabilities, it is required to submit a reorganisation plan to the Financial Supervision Authority during the term determined by a precept.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(2) The Financial Supervision Authority has the right to demand that a credit institution order an assessment of the reorganisation plan by one or several auditors appointed by the Financial Supervision Authority.

(2¹) The Financial Supervision Authority has the right to demand that the reorganisation plan prescribe an increase in own funds, including increase in share capital, and other measures necessary for ensuring the reliability of a credit institution.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(3) A reorganisation plan shall set out a detailed description of measures to be applied in order to achieve compliance with prudential ratios or improvement of the liquid assets and current liabilities ratio by the term determined by the Financial Supervision Authority.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(4) If, according to the opinion of the Financial Supervision Authority, the reorganisation plan of a credit institution is not feasible or does not ensure the protection of the interests of clients and creditors or if the credit institution is unable to perform the acts or apply the measures specified in the reorganisation plan on time, the Financial Supervision Authority has the right to establish a moratorium on the credit institution or revoke the authorisation of the credit institution or to apply other measures arising from this Act.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

§ 108. Obligation to notify Financial Supervision Authority

(1) A credit institution is required to notify the Financial Supervision Authority promptly of any changes to information or circumstances that constituted the basis for issue of the activity licence and to submit the following information and documents:

1) the new business name, address or contact details of the credit institution in the case of a change in the business name, address of the seat or contact details,

[RT I 2006, 63, 467 - entry into force 01.01.2007]

2) in the case of foundation, acquisition or dissolution of a company belonging in the consolidation group of the credit institution, the business name and address of the company and, in the case of a company being founded or acquired, also the contact details thereof;

[RT I 2006, 63, 467 - entry into force 01.01.2007]

3) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

4) upon a change of auditors, information specified in clause 13¹(1) 11) of this Act;

5) [Repealed - RT I, 09.05.2014, 2 - entry into force 19.05.2014]

6) circumstances which affect or may materially affect the financial situation of the credit institution;

7) information concerning entry into debt agreements for subordinated liabilities;

8) other information if prescribed by this Act.

(2) At the request of the Financial Supervision Authority, a credit institution is required to immediately publish the information specified in subsection (1) of this section, except for the information specified in clauses (1) 3) and 6) of this section.

(3) The data specified in this section shall be disclosed pursuant to the provisions of subsection 53 (4) of the Financial Supervision Authority Act.

§ 109. [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 110. Submission of complaints and resolution of disputes

(1) If upon the inspection of a credit institution, the officials of the Financial Supervision Authority or other persons conducting supervisory activities as authorised by the Financial Supervision Authority exceed the rights vested in them by the Financial Supervision Authority Act or by this Act, the credit institution has the right to annex an opinion to this effect to the inspection report or certificate by making a notice expressing a corresponding opinion next to the signature of the representative of the credit institution.

(2) [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

(3) [Repealed - RT I 2004, 86, 582 - entry into force 01.01.2005]

(4) [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

(5) [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

Chapter 9¹

FINANCIAL CONGLOMERATE

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

Division 1

Financial conglomerate and determination thereof

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110¹. Financial conglomerate and determination thereof

(1) On the basis of the provisions of this Division the Financial Supervision Authority shall determine whether the consolidation group including a regulated entity established in Estonia specified in subsection 110²(2) of this Act is a financial conglomerate and whether supplementary supervision thereof shall be exercised at the level of the financial conglomerate (hereinafter supplementary supervision).

(2) A financial conglomerate is deemed to be such consolidation group for the purposes of subsection 7 (2) of the Insurance Activities Act that is in accordance with the provisions of subsection (3) of this section and the following conditions:

[RT I, 07.07.2015, 1 – entry into force 01.01.2016]

1) a leading entity of the consolidation group or at least one subsidiary in the consolidation group is a regulated entity;

2) at least one of the entities of the consolidation group operates in the insurance sector and at least one of them in the banking and investment services sector;

3) the consolidated activities or all activities together of the entities in the consolidation group operating in the insurance sector as well as the consolidated activities or all activities together of the entities in the consolidation group operating in the banking and investment services sector are significant for the purposes of subsection 110³(3) or (4) of this Act.

(3) A consolidation group is deemed to be a financial conglomerate if it meets, in addition to the provisions of subsection (2) of this section, one of the following conditions:

1) the leading entity in the consolidation group is a regulated entity that is also either the parent undertaking of the entity in the financial sector, an entity with close links to an entity in the financial sector or an entity that exercises a dominant influence over the entity in the financial sector;

2) a consolidation group the leading entity of which is not a regulated entity operates mainly in the financial sector for the purposes of subsection 110³(2) of this Act.

(4) Each part of the consolidation group that meets the conditions provided for in subsections (2) and (3) of this section shall be deemed to be a financial conglomerate.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110². Definitions

(1) For the purposes of this Chapter a regulated entity is a credit institution, insurance undertaking, reinsurance undertaking, management company and investment firm and a special purpose vehicle for the purposes of subsection 3¹(6) of the Insurance Activities Act (hereinafter special purpose vehicle).

[RT I, 07.07.2015, 1 – entry into force 01.01.2016]

(2) For the purposes of this Chapter relevant financial supervision authorities are the financial supervision authorities that have issued an activity licence to the regulated entities specified in subsection (1) of this section, the coordinator of the financial conglomerate and by the agreement between the authorities specified in this subsection a financial supervision authority in another contracting state if the market share of the regulated entity in the financial conglomerate exceeds five per cent in that contracting state.

(3) For the purposes of this Chapter the insurance sector and banking and investment services sector are parts of the financial sector.

(4) The insurance sector is a part of the financial sector where only the following entities may operate:

1) an insurance undertaking;

2) a reinsurance undertaking;

3) an insurance holding company.

(5) The banking and investment services sector is a part of the financial sector where only the following entities may operate:

- 1) a credit institution;
- 2) an investment firm;
- 3) a financial institution within the meaning of § 5 of this Act, other than an investment firm;
- 4) an ancillary credit institution services undertaking within the meaning of subsection 6 (3) of this Act.

(6) In addition to the provisions of subsections (4) and (5) of this section a management company is considered to be operating in the part of the financial sector where it belongs within the consolidation group. If the management company belongs to several parts of the financial sector within the consolidation group, it is considered to be operating in the smallest financial sector.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110³. Conditions for determination of financial conglomerate

(1) The Financial Supervision Authority shall take the provisions of this section as a basis for evaluation of the conditions specified in subsections 110¹(2) and (3) of this Act.

(2) A consolidation group is mainly operating in the financial sector if the balance sheet totals of the entities of the financial sector in the consolidation group make up over 40 per cent of the balance sheet total of the consolidation group as a whole.

(3) The operations of the part of the financial sector are significant in the consolidation group if the arithmetic mean of the ratio of the balance sheet total of the entities of that part of the financial sector to the sum of balance sheet totals of all the entities of the financial sector in the consolidation group and the ratio of the required own funds according to the legislation of the entities of the same part of the financial sector to the amount of the corresponding own funds of all the entities of the financial sector in the consolidation group exceeds 0.1.

(4) The activities of the financial sector are significant in the consolidation group if the balance sheet totals of the entities operating in the smaller part of the financial sector in the consolidation group exceed six billion euros altogether.

(5) The calculations provided for in subsections (2)-(4) of this section related to the balance sheet total shall be made on the basis of the consolidated annual reports, whereas the requirements for own funds established for an insurance undertaking, reinsurance undertaking, credit institution, management company or investment firm shall be taken account of.

(6) The smallest part of the financial sector is either the insurance sector or the banking and investment services sector depending on in which sector the arithmetic mean of the ratios calculated pursuant to subsection (3) of this section is lower. The larger part of the financial sector is either the insurance sector or the banking and investment services sector depending on in which sector the indicator referred to in the previous sentence is larger.

(7) If a financial conglomerate no longer meets the requirements specified in subsections (2) and (3) of this section, the rates of 35 per cent and 0.08 shall be applied thereto within three financial years instead of the rates provided for in subsections (2) and (3).

(8) If the entities operating in the smaller part of the financial sector in the financial conglomerate no longer meet the requirement provided for in subsection (4) of this section, they shall be applied, within the following three financial years, the condition that the balance sheet totals of the entities operating in the smaller part of the financial sector shall exceed five billion euros altogether shall be applied with regard to them.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110⁴. Specification of determination of financial conglomerate

(1) If the operations of the financial sector are significant in accordance with the provisions of subsection 110³(4) of this Act but the activities of the parts of the financial sector are insignificant pursuant to the provisions of subsection (3) of the same section, the Financial Supervision Authority may decide by agreement with other relevant financial supervision authorities that the consolidation group shall not be considered as a financial conglomerate.

(2) If the operations of the parts of the financial sector are significant according to the provisions of subsection 110³(3) of this Act but the actions of the financial sector are insignificant according to the provisions of subsection (4) of the same section, the Financial Supervision Authority may decide by mutual agreement with the relevant financial supervision authorities that the consolidation group shall not be considered as a financial conglomerate.

(3) In addition to the provisions of subsections (1) and (2) of this section the Financial Supervision Authority may decide in cooperation with other relevant financial supervision authorities that the provisions of §§ 110⁹–110¹¹ of this Act shall not be applied if the exercise of supplementary supervision over the consolidation group is not justified or it would be misleading.

(4) The Financial Supervision Authority shall submit the decisions referred to in subsections (1)–(3) of this section to other relevant financial supervision authorities and disclose the decisions on its website. If the Financial Supervision Authority is forwarded the specified decisions, the decisions shall be publicised on its website.

(5) Upon determining the financial conglomerate the Financial Supervision Authority may decide by agreement with other relevant financial supervision authorities that upon application of subsections 110³(2)–(4) of this Act:

- 1) the entity in the consolidation group shall not be included in finding the ratios in the cases provided for in subsection 110⁸(9) of this Act, except in the case the entity has transferred the location of its registered office to a third state from the contracting state and it is known that the location of the registered office of the entity was changed to avoid the exercise of financial supervision provided for in the legislation of the contracting state;
- 2) the consolidation group shall be in compliance with the conditions provided for in subsections 110³(2) and (3) of this Act within three consecutive financial years in order to be determined as a financial conglomerate;
- 3) the holding in one or several entities of the smaller part of the financial sector in the consolidation group shall not be taken account of if the holding is qualifying or the total holdings are decisive upon the determination of the financial conglomerate and the total holdings are insignificant for the purposes of supplementary supervision.

(6) The provisions of clause (5) 2) of this section shall not be applied if significant changes have occurred in the structure of the consolidation group.

(7) Upon determination of the financial conglomerate the Financial Supervision Authority may, by agreement with other relevant financial supervision authorities, decide that upon application of subsections 110³(2) and (3) of this Act:

- 1) the ratio based on the balance sheet totals shall be replaced with the ratio based on income structure, total assets under management or off-balance-sheet liabilities;
- 2) the ratio based on balance sheet totals shall be replaced with the ratio based on income structure, total assets under management and off-balance-sheet liabilities;
- 3) the ratios used in calculations shall be added the ratio based on either income structure, total assets under management or off-balance-sheet liabilities or all the ratios referred to.

(8) The decision specified in subsection (7) of this section may be taken only in exceptional cases in a situation where the income structure, total assets under management or off-balance sheet liabilities are essential for the purposes of supplementary supervision.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

Division 2

Supplementary supervision

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110⁵. Scope and measures of supervision

(1) Supplementary supervision shall be exercised over such Estonian regulated entity:

- 1) that is a leading entity of the financial conglomerate;
- 2) whose parent undertaking is a mixed financial holding company of a contracting state;
- 3) that has a dominant influence over another entity of a financial sector referred to in subsections 110²(4)–(6) of this Act or over which such entity has a dominant influence.

(2) If a financial conglomerate is part of such financial conglomerate over which the supplementary supervision provided for in this Chapter is already being exercised, separate supplementary supervision over such conglomerate shall not be exercised.

(3) Supplementary supervision shall be exercised in the procedure provided for in § 110¹² of this Act, over an Estonian regulated entity whose parent undertaking is a regulated entity established in a third state or a mixed financial holding company established in a third state and which is not subject to supervision on the basis of subsection (1) or (2) of this section.

(4) If there is a close link between a person and an Estonian regulated entity or the person exercises a dominant influence over an Estonian regulated entity without being closely linked and this regulated entity is not subject to supervision on the bases provided for in subsections (1)–(3) of this section, the Financial Supervision Authority shall, together with a relevant financial supervision authority, decide whether and to what extent to exercise supervision over an Estonian regulated entity as if it belonged to the financial conglomerate.

(5) The decision specified in subsection (4) of this section to exercise supervision shall only be made if the consolidation group where the Estonian regulated entity belongs is in compliance with the conditions provided for in clauses 110¹(2) 2) and 3) of this Act.
[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110⁶. Appointment of coordinator of financial conglomerate

(1) The relevant financial supervision authorities and the financial supervision authority of the location of a mixed financial holding company shall appoint the coordinator of the financial conglomerate from among themselves for exercise and coordination of the supplementary supervision.

(2) The Financial Supervision Authority shall be appointed the coordinator of the financial conglomerate if at least one of the following conditions is met:

- 1) the leading entity of the financial conglomerate is an Estonian regulated entity;
- 2) the parent undertaking of the Estonian regulated entity in the financial conglomerate is a mixed financial holding company;
- 3) the parent undertaking of the Estonian regulated entity in the financial conglomerate and of the regulated entity of another contracting state is a mixed financial holding company located in Estonia;
- 4) the leading entities of the financial conglomerate are mixed financial holding companies located in Estonia and in another contracting state, whereas both the Estonian regulated entities and the regulated entities of another contracting state belong to the financial conglomerate and only the Estonian regulated entity out of them is operating in the larger part of the financial sector of the financial conglomerate;
- 5) the leading entities of the financial conglomerate are mixed financial holding companies located in Estonia and in another contracting state, whereas out of the regulated entities only the insurance undertakings, reinsurance undertakings or special purpose vehicles of Estonia and another contracting state belong to the financial conglomerate and the balance-sheet total of an Estonian insurance undertaking, reinsurance undertaking or special purpose vehicle is the largest;
- 6) the leading entities of the financial conglomerate are mixed financial holding companies located in Estonia and in another contracting state, whereas out of the regulated entities only the credit institutions, investment firms or management companies of Estonia and another contracting state belong to the financial conglomerate and the balance sheet total of an Estonian credit institution, investment firm or management company is the largest;
- 7) the leading entities of the financial conglomerate are mixed financial holding companies located in Estonia and in another contracting state, whereas the insurance undertakings, reinsurance undertakings or special purpose vehicles of Estonia and another contracting state or the credit institutions, investment firms or management companies of Estonia and another contracting state are operating in the larger part of the financial sector of the financial conglomerate and a condition specified in either clause 5) or 6) of this section is fulfilled correspondingly;
- 8) the parent undertaking of the regulated entities of Estonia and another contracting state is a mixed financial holding company located in a contracting state other than that referred to in this clause and the balance sheet total of an Estonian regulated entity operating in the larger part of the financial sector of the financial conglomerate is the largest in the specified part of the financial sector.
- 9) the balance sheet total of an Estonian regulated entity operating in the larger part of the financial sector of the financial conglomerate is the largest in specified part of the financial sector, and this is not any of the cases referred to in clauses 1)-8) of this section.

(3) The relevant financial supervision authorities may by common agreement waive the application of the criteria provided for in subsection (2) of this section and appoint any other financial supervision authority as the coordinator of financial conglomerate if this is justified on the basis of the structure of the financial conglomerate or the importance of its activities in Estonia or another contracting state.

(4) On the proposal of the coordinator of the financial conglomerate the relevant financial supervision authorities shall establish a cooperation arrangement in which, among other, the tasks of the coordinator of the financial conglomerate provided for in §-s 110⁷ of this Act may be specified.

(5) Appointment of the coordinator of the financial conglomerate shall not affect the rights and obligations related to the exercise of supervision by the Financial Supervision Authority.
[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110⁷. Tasks and rights of Financial Supervision Authority as coordinator of financial conglomerate

(1) If the Financial Supervision Authority has been appointed the coordinator of the financial conglomerate, they shall perform the following tasks upon the exercise of supervision:

- 1) inform the leading entity in the consolidation group or, in the absence thereof, a regulated entity with the largest balance sheet total operating in the larger financial sector in the consolidation group that the consolidation group has been determined as a financial conglomerate and the Financial Supervision Authority has been appointed the coordinator thereof;

- 2) inform the relevant financial supervision authority, the financial supervision authority of the location of the mixed financial holding company, the Joint Committee of European Supervisory Authorities and the European Commission of the determination of the consolidation group specified in clause 1) of this section as a financial conglomerate and appointment of the coordinator thereof;
- 3) assess the financial situation of the financial conglomerate and exercise the general supervision over the financial situation and verify the compliance of the financial conglomerate with the provisions of §§ 110⁸–110¹¹ of this Act;
- 4) plan and coordinate in cooperation with the relevant financial supervision authorities the supervision measures to prevent and resolve crisis situations;
- 5) verify the compliance of the head of a mixed financial holding company with the provisions of § 110¹³ of this Act;
- 6) conduct regular stress tests of the financial conglomerate in accordance with the guidance of the Joint Committee of European Supervisory Authorities;
- 7) perform other tasks arising from the law or the legislation issued on the basis thereof.

(2) If the Financial Supervision Authority needs, for the exercise of supplementary supervision, information which an entity of another contracting state in the financial conglomerate has already submitted to their own financial supervision authority, the Financial Supervision Authority shall, in the first instance, ask for this information from the financial supervision authority referred to.

(3) The Financial Supervision Authority may, for fulfilment of the obligations provided for in this section, apply to the financial supervision authority of the location of the parent undertaking in the financial conglomerate for relevant information about the parent undertaking referred to.

(4) If a mixed financial holding company in the financial conglomerate fails to comply with the requirement referred to in this Chapter or where the requirement is met but the solvency of the financial conglomerate may nevertheless be jeopardised or where the intra-group transactions of the consolidation group or the risk concentrations are a threat to the financial position of regulated entities, the Financial Supervision Authority shall have the right to issue a precept and demand with this the compliance with the requirement or rectification of the situation. Upon failure to comply with the issued precept or inappropriate performance thereof the Financial Supervision Authority may apply penalty payment under the conditions and in the procedure provided for in § 104¹ of this Act.

(5) Where a financial conglomerate has been determined, the Financial Supervision Authority as the coordinator shall have the right to make a proposal for making a decision with regard to the provisions specified in subsections 110⁴(5) and (7) of this Act.

(6) The Financial Supervision Authority shall, in agreement with other relevant financial supervision authorities, have the right to decide within the period specified in subsections 110³(7) and (8) of this Act that the application of provisions of the subsections referred to shall be terminated with regard to the financial conglomerate.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110⁸. Consolidated own funds of financial conglomerate

(1) If the leading entity in the financial conglomerate is an Estonian regulated entity, the amount of the consolidated own funds of the financial conglomerate shall be calculated on the basis of the consolidated annual accounts taking account of the provisions of subsections (3)–(12) of this section.

(2) If the leading entity of the financial conglomerate is not an Estonian regulated entity, the amount of the consolidated own funds of the financial conglomerate shall be calculated in accordance with the provisions of subsection (1) of this section or pursuant to the principles and conditions determined by the coordinator of the financial conglomerate.

(3) Upon the calculation of the amount of the consolidated own funds of the financial conglomerate an insurance undertaking, reinsurance undertaking, insurance holding company, special purpose vehicle, credit institution, ancillary banking services undertaking, management company and investment firm and any other financial institution and mixed financial holding company in the financial conglomerate shall be taken account of.

(4) The amount of the consolidated own funds of an entity in the financial conglomerate referred to in subsection (3) of this section shall be calculated in accordance with the requirements provided for in the legislation of the state of establishment of the relevant entity.

(5) The estimated amount of the own funds of a mixed financial holding company shall be calculated in accordance with:

- 1) the provisions of the Insurance Activities Act with regard to the insurance undertaking if the insurance sector is the larger part of the financial sector in the financial conglomerate;

2) the provisions of this Act with regard to a credit institution or the provisions of the Securities Market Act with regard to an investment firm if the banking and investment services sector is the larger part of the financial sector in the financial conglomerate.

(6) The amount of the consolidated own funds of the financial conglomerate may not be lower than the required amount of the consolidated own funds of the financial conglomerate at any time.

(7) The required amount of the consolidated own funds of the financial conglomerate is the total of the required amounts of the consolidated own funds of entities in the financial sector of the financial conglomerate arising from the legislation.

(8) The calculation of the amount of the consolidated own funds of the financial conglomerate and the data needed for that purpose shall be submitted to the coordinator of the financial conglomerate for at least once a year:

1) by the leading entity of the financial conglomerate if this is a regulated entity;
2) by a regulated entity appointed by a mixed financial holding company or the coordinator in cooperation with other relevant financial supervision authorities and the financial conglomerate if the leading entity of the financial conglomerate is not a regulated entity.

(9) An entity in the financial conglomerate may not be included in calculation of the amount of the consolidated own funds of the financial conglomerate by the coordinator of the financial conglomerate if at least one of the following conditions is met: 1) 1) the referred to entity is located in a third state and obtaining the needed information out of it is hindered because the financial supervision authority of the third state has no legal basis or possibilities for cooperation with the coordinator of the financial conglomerate;

1) the referred to entity is of no significant importance for the purposes of the supplementary supervision of the regulated entity in the financial conglomerate;

2) the inclusion of the entity referred to would not be justified for the purposes of the supplementary supervision or it may be misleading.

(10) If more than one entity of the financial conglomerate should not be included in the calculation of the amount of the consolidated own funds of the financial conglomerate on the basis of clause (9) 2) of this section but these entities together have a significant impact, the provisions of clause (9) 2) of this section shall not be applied with regard to them.

(11) The coordinator of the financial conglomerate shall, except in cases of urgency, consult other relevant financial supervision authorities before taking a decision on the basis of the condition specified in clause (9) 3) of this section.

(12) If the coordinator of the financial conglomerate does not include the regulated entity in the calculation of the amount of the consolidated own funds of the financial conglomerate on the basis of clause (9) 2) or 3) of this section, the financial supervision authority that has granted authorisation for the activity shall have the right to ask from the leading entity of the financial conglomerate for information which is needed for the exercise of supervision over the regulated entity that has not been included.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110⁹. Concentration of exposures of financial conglomerate

(1) The concentration of exposures of the financial conglomerate is the loss potential arising from exposures related to assets and obligations of entities within the financial conglomerate which is large enough to threaten the solvency or the general financial position of the regulated entity in the financial conglomerate. The loss potential may be caused by credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of the risks referred to.

(2) Subsections 85 (1)-(3) of this Act shall be taken account of upon calculation of the concentration of exposures of the financial conglomerate.

(3) If the leading entity of the financial conglomerate is an Estonian regulated entity, it is required to report at least once annually to the coordinator of the financial conglomerate any risk concentration exceeding the limitations at the level of the financial conglomerate as a whole. If the leading entity of the financial conglomerate is not a regulated entity, the mixed financial holding company or the regulated entity in the financial conglomerate determined by the coordinator of the financial conglomerate after consultation with other relevant financial supervision authorities and the financial conglomerate shall have the obligation to submit a report.

(4) The coordinator of the financial conglomerate may demand information provided for in subsection (3) of this section more frequently than once a year in the procedure of periodic reporting.

(5) If the Financial Supervision Authority is the coordinator of the financial conglomerate, it shall establish the limitations referred to in subsection (3) of this section by an agreement with other relevant financial supervision authorities. The determination of the limitation shall be based on the consolidated own funds of the financial conglomerate.

(6) If the Financial Supervision Authority is the coordinator of the financial conglomerate, it shall determine, after consultation with other relevant financial supervision authorities and with the financial conglomerate, exposures with regard to which the report referred to in subsection (3) of this section shall be submitted in any event. Upon determination of those exposures the specific nature of the consolidation group and the risk management system shall be taken account of.

(7) If an Estonian regulated entity or mixed financial holding company located in Estonia belong to the financial conglomerate, the Financial supervision Authority shall have the right to establish limitations to the exposures of the financial conglomerate or apply other measures of supervision with the purpose to exercise supervision over the exposures of the financial conglomerate at the level of the financial conglomerate to avoid the circumvention of the requirements imposed on the financial sector.

(8) Upon exercise of supervision over the exposures of the financial conglomerate, the coordinator of the financial conglomerate shall monitor primarily the possible risk of contagion thereof and of the conflict of interests in the financial conglomerate, as well as the risk of circumvention of the requirements imposed on the financial sector and the volume and scope of the risks referred to above.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110¹⁰. Intra-group transactions of financial conglomerate

(1) The intra-group transactions in the financial conglomerate shall mean all transactions by which a regulated entity within a financial conglomerate relies either directly or indirectly upon another entity within the same consolidation group or upon any natural or legal person related by close links to the entity in the consolidated group referred for the fulfilment of their obligations, irrespective of whether or not the obligations are contractual and whether or not they are for payment.

(2) If the leading entity of the financial conglomerate is an Estonian regulated entity, it is required to report at least once annually to the coordinator of the financial conglomerate any significant intra-group transactions. If the leading entity of the financial conglomerate is not a regulated entity, the mixed financial holding company or a regulated entity within the financial conglomerate determined by the coordinator of the financial conglomerate after consultation with other relevant financial supervision authorities and with the financial conglomerate shall have the obligation to submit a report

(3) If the Financial Supervision Authority is the coordinator of the financial conglomerate, it shall determine by an agreement with other relevant financial supervision authorities and the financial conglomerate with regard to which transactions the report specified in subsection (2) of this section shall be submitted, taking account of the specific nature of the financial conglomerate and the risk management system upon the determination of the transactions.

(4) If the Financial Supervision Authority is the coordinator of the financial conglomerate, it shall establish limitations by agreement with other relevant financial supervision authorities to determine significant transactions with regard to which a report is to be submitted in any event. The determination of the limitation shall be based on the consolidated own funds of the financial conglomerate.

(5) If the coordinator of the financial conglomerate has not established the limitation specified in subsection (4) of this section by agreement with other relevant financial supervision authorities, the transaction shall be considered to be significant if its value is more than five per cent of the amount of the consolidated own funds of the financial conglomerate.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110¹¹. Internal control system and risk management at financial conglomerate level

(1) The internal control system of an Estonian regulated entity within the financial conglomerate shall be adequate and effective also at the level of the financial conglomerate.

(2) The internal control system shall ensure for all the entities within the financial conglomerate:

- 1) the identification and assessment of risks that may affect the activities and efficiency of internal control system;
- 2) the evaluation of the measures applied to reach the objectives and the efficiency thereof;
- 3) the pairing of the corresponding own funds with the risks specified in clause 1) of this subsection;
- 4) the reporting and accounting procedures necessary for the identification, monitoring and administering the intra-group transactions in the financial conglomerate and exposures;
- 5) the data and information necessary for the exercise of supervision over the financial conglomerate.

(3) An Estonian regulated entity shall submit to the Financial Supervision Authority once a year the legal structure of the financial conglomerate, a list of all of the entities thereof, including subsidiaries and major branches, and the organisational structure and management scheme of the financial conglomerate.

(4) An Estonian regulated entity shall disclose the information specified in subsection (3) of this section on its website and shall update that once a year or refer to up-to-date information publicised on the basis of the legislation already earlier.

(5) The management of an Estonian regulated entity in the financial conglomerate shall ensure that neither the regulated entity nor other entities within the financial conglomerate would take risks in their activities which could endanger the financial situation of the regulated entities or of the consolidation group.

(6) To ensure the provisions of subsection (5) of this section, the regulated entities and other entities within the financial conglomerate shall have the principles for risk control, management and assessment corresponding to their activities, enabling, among other,:

- 1) to foresee the impact of the implementation of a concrete business strategy on the required own funds of the financial conglomerate;
- 2) to measure, monitor and control all the risks at the level of the financial conglomerate;
- 3) where necessary, contribute to working out and implementation of relevant reorganisation and crisis resolution plans.

(7) The principles specified in subsection (6) of this section shall be reviewed on a regular basis and, where necessary, updated.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110¹². Supplementary supervision over subsidiary of entity located in third state

(1) If the supplementary supervision provided for in this Chapter is not exercised over the regulated entity whose parent undertaking is a regulated entity or mixed financial holding company of a third state, the Financial Supervision Authority if it has been appointed the coordinator of the financial conglomerate shall evaluate the supervision exercised by the financial supervision authority of the third state and decide whether it is equivalent to the supplementary supervision corresponding to the requirements established in this Chapter.

(2) Upon the evaluation of the equivalence referred to in subsection (1) of this section the Financial Supervision Authority shall be based on the guidance of the Joint Committee of European Supervisory Authorities and make a decision with regard to the equivalence after consulting other relevant financial supervision authorities.

(3) If in the case specified in subsection (1) of this section the Financial Supervision Authority is a relevant financial supervision authority but is not the coordinator of the financial conglomerate, and the decision of that coordinator of the financial conglomerate with regard to the equivalence specified in subsection (1) of this section is different from the evaluation of the Financial Supervision Authority, the Financial Supervision Authority shall have the right to turn to the relevant European Supervisory Authority pursuant to Article 19 of the European Parliament and Council Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L331, 15.12.2010, pp.12-47), or Article 19 of the European Parliament and Council Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L331, 12.15.2010, pp. 48-83), or Article 19 of the European Parliament and Council Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L331, 15.12.2010, pp.84-119).

(4) If it is decided upon the evaluation of the equivalence of the supervision that the supervision exercised by the financial supervision authority of the third state is not equivalent to the supplementary supervision corresponding to the requirements established in this Chapter, the supplementary supervision over the regulated entity shall be conducted by the coordinator of the financial conglomerate.

(5) If, pursuant to the provisions of subsection (4) of this section, it is impossible to exercise supplementary supervision, the Financial Supervision Authority, if it is the coordinator, shall have the right by agreement with other relevant financial supervision authorities to use other methods of supervision which shall ensure the supervision over the activities of the regulated entity within the financial conglomerate and to demand primarily the establishment of a mixed financial holding company in the contracting state.

(6) The Financial Supervision Authority shall notify other relevant financial supervision authorities and the European Commission of the use of the method of supervision specified in subsection (5) of this section.

[RT I, 12.07.2013, 2 - entry into force 22.07.2013]

§ 110¹³. Management of mixed financial holding company in financial conglomerate

(1) The managers of a mixed financial holding company are the members of the supervisory board and management board of the mixed financial holding company.

(2) The manager of the mixed financial holding company shall be applied the provisions of § 48 of this Act with regard to the managers of the credit institutions.
[RT I, 12.07.2013, 2 – entry into force 22.07.2013]

Chapter 10

MORATORIUM

§ 111. Definition of moratorium

(1) A moratorium is a total or partial suspension of the activities of an Estonian credit institution, a branch of such credit institution founded in a contracting state or a branch of a third country credit institution founded in Estonia with solvency problems (hereinafter in this Chapter credit institution) in order to ascertain the reasons for and nature of the solvency problems and the possibilities of restoring solvency, and to protect the proprietary interests of creditors.

(2) Only the Financial Supervision Authority has the right to decide to establish a moratorium with respect to an Estonian credit institution or a branch of such credit institution founded in a contracting state.

(3) The Financial Supervision Authority has the right to decide to establish a moratorium with respect to a branch of a third country credit institution founded in Estonia unless otherwise agreed with the supervisory authority of the corresponding third country.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 112. Establishment of moratorium

(1) The Financial Supervision Authority may establish a moratorium on a credit institution if:

- 1) the credit institution fails, as a result of the financial situation thereof, to perform at least one of its obligations to the depositors on time, or
- 2) the ratio of liquid assets to current liabilities of the credit institution is such that, according to the opinion of the Financial Supervision Authority, the credit institution is unable to perform its obligations on time, or
- 3) [Repealed - RT I, 19.03.2015, 3 - entry into force 29.03.2015]
- 4) according to the opinion of the Financial Supervision Authority it is necessary in order to protect the proprietary interests, or other circumstances exist that affect or may materially affect the financial situation of the credit institution or the continuity of its economic activity.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(1¹) If the circumstances specified in subsection (1) of this section become evident, the Financial Supervision Authority has the right to establish a moratorium in respect of a credit institution even if the credit institution was earlier granted authorisation for voluntary dissolution specified in subsection 117 (3) of this Act.

(2) [Repealed - RT I 2001, 48, 268 - entry into force 01.01.2002]

(3) Upon establishment of a moratorium, the Financial Supervision Authority shall determine the term, extent and conditions of the moratorium, appoint a moratorium administrator and determine the competence thereof.

(3¹) A decision to establish a moratorium enters into force in all contracting states simultaneously with the entry into force of such decision in Estonia. The decision and the consequences thereof are valid under the same conditions and to the same extent in Estonia as well as in other contracting states.

(4) The duration of a moratorium shall not exceed six months.

(5) Moratorium administrators shall meet the requirements provided for in subsection 56 (2) of this Act. Moratorium administrators shall not be members of staff of the Financial Supervision Authority.

(6) The Financial Supervision Authority shall promptly send a notice concerning a moratorium to the commercial register of the seat of an Estonian credit institution and known registers of the contracting states where the branches of the credit institution are founded for a corresponding entry to be made and shall add the name, personal identification code and contact details of the moratorium administrator to the notice.

(7) A notice concerning the establishment of a moratorium shall be promptly published by the Financial Supervision Authority in at least two daily national newspapers.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 113. Management of credit institution during moratorium

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(1) Unless otherwise established pursuant to subsection 112 (3) of this Act, a moratorium administrator has the right during the moratorium to:

- 1) represent, manage and monitor the credit institution;

- 2) suspend compliance with resolutions of the directing bodies of the credit institution;
- 3) administer and dispose of the assets of the credit institution.

(1¹) The authority of a moratorium administrator in a contracting state shall be proven by a certified transcript of the decision on establishment of the moratorium together with the translation of the decision on establishment of the moratorium into the official language or one of the official languages of the relevant contracting state.

(1²) A moratorium administrator has the right to exercise, in a contracting state, the same powers he or she is authorised to exercise in Estonia. In addition to the above, he or she may appoint persons to assist or where necessary, represent him or her in the process of the moratorium. Upon exercising his or her rights, sale of assets and notification of workers, a moratorium administrator shall adhere to the provisions of legislation the relevant contracting state. A moratorium administrator has no right to apply coercive measures upon exercising his or her rights or to make decisions on matters that are subject to court action.

(2) The authority of members of the directing bodies of a credit institution shall be suspended on the basis of a resolution concerning establishment of a moratorium, unless otherwise established pursuant to subsection 112 (3) of this Act.

(3) Within two days after appointment, the moratorium administrator is required to:

- 1) display a notice at the seat and every branch and representative office of the credit institution concerning the appointment of the moratorium administrator, indicating the names of the persons whose authority to conclude transactions in the name of the credit institution has been revoked or whose earlier right to give orders in the name of the credit institution to make payments or transfers has been revoked;

- 2) publish a notice with the content provided for in clause 1) of this subsection in at least one daily national newspaper and one local newspaper of the seat of the credit institution and the branches thereof and to repeat the notice once a week for four weeks;

- 3) notify the correspondent banks and the Estonian Central Securities Depository and also the known registrars of similar registers located in the Contracting States where branches of the Estonian credit institution are founded of persons who are no longer authorised to dispose, in the name of the credit institution, of the assets of the credit institution or assets administered on the basis of authorisation, and of persons to whom corresponding authorisation has been granted;

[RT I, 26.06.2017, 1 – entry into force 06.07.2017]

- 4) suspend all distributions of profit, including payment of bonuses, additional remuneration, other incentives, loans and other amounts, to the managers, members of staff, and shareholders or members of the credit institution.

(4) A moratorium administrator shall submit data to the depositors and the Guarantee Fund pursuant to the procedure prescribed in the Guarantee Fund Act.

(5) A moratorium administrator shall receive remuneration corresponding to his or her tasks from the funds of the credit institution. The Financial Supervision Authority shall determine the remuneration of a moratorium administrator. Assistants to a moratorium administrator, including experts, auditors and members of staff of the credit institution, may be remunerated corresponding to the tasks and qualifications thereof.

(6) A moratorium administrator shall ascertain whether the credit institution is able to eliminate solvency problems and continue its activities.

(7) Not later than within thirty days after appointment, the moratorium administrator shall submit a written report concerning the financial situation of the credit institution to the Financial Supervision Authority. The format of the report shall be established by Eesti Pank.

(8) A moratorium administrator is required to submit activity reports at the request of the Financial Supervision Authority but not less frequently than once a month.

(9) [Repealed - RT I 2005, 13, 64 - entry into force 18.03.2005]

§ 114. Performance of obligations during moratorium

(1) A moratorium administrator is required to act in the most economically purposeful manner pursuant to the interests of all depositors, other clients and creditors of the credit institution.

(2) During a moratorium, the moratorium administrator may sell assets of the credit institution in the most profitable manner and invest the amounts received in credit institutions or low-risk money market instruments with a view to eliminating the solvency problems of the credit institution. A moratorium administrator may conclude transactions and perform acts in the interests of creditors in order to prevent further losses.

(3) During a moratorium, a credit institution shall not perform financial and other proprietary obligations assumed before establishment of the moratorium. This provision does not apply in the case provided for in subsection (4) of this section or if otherwise established pursuant to subsection 112 (3) of this Act.

(4) During a moratorium, it is permitted to:

- 1) perform obligations arising from payment orders accepted for settlement by the credit institution before the establishment of the moratorium;
- 2) perform netting through a payment system;
- 3) execute payment orders issued for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314 ¹ of the Law of Property Act if the payment orders for the disposal of objects of financial collateral are issued before establishment of a moratorium or at a time specified in subsection (11) of this section.

(5) Compulsory executions or seizure of the assets of a credit institution shall not be carried out in the credit institution during a moratorium.

(6) During a moratorium, a court shall refuse, by a ruling, to accept a petition against the credit institution and shall return the petition. A court shall suspend the proceedings in which the credit institution is a defendant until the end of the moratorium.

(7) Unless otherwise established pursuant to subsection 112 (3) of this Act, the performance under a moratorium of such obligations of the clients of a credit institution which are contingent on the credit institution shall be suspended for the time of the moratorium.

(8) Unless otherwise provided for in this Act, the obligation of a credit institution to pay a debt pursuant to a principal or accessory financial obligation shall be suspended from the date of establishment of a moratorium until termination thereof. Payment of debts shall be resumed immediately after termination of the moratorium if the credit institution has restored its solvency. Fines and interest on arrears shall not be imposed, calculated or paid during a moratorium. Calculation of interest shall continue but the payment thereof shall be commenced pursuant to contracts, on the date following the date of termination of the moratorium.

(9) A credit institution shall commence performance of obligations assumed before the establishment of a moratorium on the date following the date of termination of the moratorium if the credit institution has restored its solvency.

(10) The provisions of this section do not affect the validity of disposition for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314 ¹ of the Law of Property Act, or the netting performed through a payment system specified in subsection 87 (2) of this Act and through a securities settlement system or linked system specified in subsection 213 (1) and subsection 213 ¹(1) of the Securities Market Act.

[RT I, 29.06.2011, 1 - entry into force 30.06.2011]

(11) Provision of financial collateral and disposal of objects of financial collateral provided for in § 314 ¹ of the Law of Property Act after the establishment of a moratorium are valid if carried out on the date of establishment of the moratorium and the counterparty to the financial collateral arrangement proves that they were not aware nor should have been aware of establishment of the moratorium.

[RT I 2004, 37, 255 - entry into force 01.05.2004]

§ 115. Termination of moratorium

(1) The Financial Supervision Authority shall decide on the termination of a moratorium on the basis of data submitted in the reports of the moratorium administrator and during the term specified in the resolution on establishment of the moratorium, but not later than within six months after establishment of the moratorium.

(2) A moratorium administrator may apply for termination of the moratorium before the end of the specified term.

(3) The Financial Supervision Authority shall decide on the termination of a moratorium and grant consent for resumption of the activities of a credit institution if:

- 1) according to the report of the moratorium administrator, the solvency problems of the credit institution have been eliminated and the proprietary interests of the clients and creditors are protected, and
- 2) according to the opinion of the Financial Supervision Authority, the circumstances specified in § 17 of this Act do not exist.

(4) On the basis of a resolution passed pursuant to subsection (3) of this section, a credit institution shall reacquire the right to administer the assets thereof and the authority of the members of the directing bodies shall be resumed.

(5) If, at the end of the term of a moratorium but not later than within six months after establishment of the moratorium, a credit institution fails to comply with the requirements provided for in this Act, the Financial

Supervision Authority shall decide on the revocation of authorisation of the credit institution on the bases prescribed in § 17 of this Act.

[RT I 2001, 102, 672 - entry into force 01.01.2002]

Chapter 10¹

REORGANISATION OF CREDIT INSTITUTIONS OPERATING IN SEVERAL STATES

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 115¹. Law applicable to reorganisation measures

(1) For the purposes of this Act, reorganisation measures are acts performed in the course of corresponding proceedings (reorganisation proceedings) of an administrative authority or court of another contracting state with the objective to preserve or restore the solvency of the credit institution of the corresponding contracting state or a branch thereof, or a branch founded in that contracting state by a third country credit institution, and which may affect earlier rights of third parties or result in suspension of payments or execution proceedings, or reduction of claims. Crisis resolution measures and rights provided for in the Financial Crisis Prevention and Resolution Act and implemented by Financial Supervision Authority or other competent authorities are also deemed as reorganisation measures.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(2) The provisions of this section concerning reorganisation measures and proceedings also apply to a moratorium established in respect of an Estonian credit institution, its branch founded in a contracting state or a branch founded in Estonia by a third country credit institution, as well as to the bankruptcy proceedings before making a bankruptcy regulation in respect of a Estonian credit institution or third country credit institution with a branch in Estonia.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(3) Reorganisation measures in respect of a credit institution of a contracting state or its branches shall be carried out in adherence to the law of the home country of the contracting state unless otherwise provided for in this section.

(4) The consequences of reorganisation proceedings on unfinished proprietary court dispute where a credit institution of Estonia or another contracting state or a branch thereof founded in a contracting state, or a branch founded in Estonia by a third country credit institution (hereinafter in this Act credit institution or branch of credit institution) are the participants in the proceedings shall be determined pursuant to the law of the contracting state conducting the proceedings.

(5) The law of the contracting state applicable to the corresponding contract or transaction shall apply, in the part of the consequences of application of reorganisation measures, to:

- 1) employment contracts;
- 2) agreements regulating netting;
- 3) agreements whereby securities are sold subject to a commitment to repurchase the securities or similar securities at a fixed price at an agreed time in the future (repo agreement) unless otherwise provided by subsection (8) of this section;
- 4) transactions performed on a regulated securities market unless otherwise provided by subsection (8) of this section.

(6) The law of the contracting state of the location of the relevant immovable applies to the consequences of implementation of reorganisation measures with respect of a contract from which the right to acquire or use the immovable arises, and to the validity of a disposition made in respect of an immovable belonging to a credit institution or branch of a credit institution if such transaction is performed after implementation of reorganisation measures in respect of the credit institution or branch.

(7) The law of the contracting state exercising supervision over the relevant register applies to the consequences of implementation of reorganisation measures with respect to a person's rights concerning an immovable, vessel or aircraft subject to entry in a public register which belongs to a credit institution or branch of a credit institution, and to the validity of a disposition made in respect of an immovable, vessel or aircraft which belongs to a credit institution or branch of a credit institution if such transaction is performed after implementation of reorganisation measures in respect of the credit institution or branch.

(8) The provisions of § 23¹ of the Private International Law Act apply to the consequences of implementation of reorganisation measures with respect to a person's rights concerning a security subject to registration, and to the validity of a disposition made in respect of a registered security which belongs to a credit institution or

branch of a credit institution if such transaction is performed after implementation of reorganisation measures in respect of the credit institution or branch.

(9) Implementation of reorganisation measures does not affect a creditor's right to set off the claim thereof against the claim of the credit institution if setting off claims is permitted pursuant to the law applicable to the credit institution.

(10) Implementation of reorganisation measures does not affect the real rights of a creditor or third party encumbering an object of a credit institution or branch of a credit institution which at the time of commencement of the proceedings is located in another contracting state, above all the following:

- 1) the right of sale of the object arising from the right of security;
- 2) pre-emptive right to the satisfaction of a claim primarily arising from the right of security or an agreement to assign a security;
- 3) the right to claim delivery of a thing from everyone who possesses the thing without legal basis;
- 4) the right to the fruits of an object.

(11) The provisions of subsection (10) also apply to the right to acquire the real rights specified in the section above entered in a public register and valid with respect to third parties.

(12) Implementation of reorganisation measures with respect to a credit institution or a branch of a credit institution does not affect the rights arising from the reservation of title of the seller of a movable acquired by the credit institution or branch if, at the time of implementation of the reorganisation measures, the movable was located in a contracting state where the implementation of reorganisation measures was not decided.

(13) Implementation of reorganisation measures with respect to a credit institution or a branch of a credit institution selling a movable does not give the right, after transfer of possession of the thing, to cancel or terminate the contract of sale, and does not hinder the acquisition of the thing by the buyer if, at the time of implementation of the reorganisation measures, the movable was located in a contracting state where the implementation of reorganisation measures was not decided.

(14) The law of the home country of the relevant credit institution or branch of a credit institution applies to declaration of the transactions provided in subsections (9), (10), (12) and (13) of this section to be invalid due to damage to the interests of creditors.

(15) The law of the home country of a credit institution of a contracting state does not apply upon implementation of reorganisation measures by a court, provided that all the following conditions are met concurrently:

- 1) the reorganisation measure applied by the court prescribes for a procedure for declaration invalid or subject to recovery of legal acts damaging to the creditors as a whole which were performed before the implementation of such measure;
- 2) the person who benefited from a legal act specified in clause 1) of this subsection certifies that the law of a contracting state other than the home country of the credit institution applies to the legal act and pursuant to such law, no basis exists for contestation of the legal act.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 115². Implementation of reorganisation measures

(1) Only an administrative authority or court of the home country of the relevant credit institution has the right to decide on implementation of reorganisation measures with respect to a credit institution of a contracting state or a branch founded thereby in another contracting state, including Estonia.

(2) A decision to implement reorganisation measures with respect to a credit institution of a contracting state or a branch founded thereby in Estonia enters into force in Estonia simultaneously with the entry into force of such decision in the home country of the credit institution

(3) The reorganisation measures implemented with respect to a credit institution of a contracting state or a branch founded thereby in Estonia are valid under the same conditions and to the same extent in Estonia as well as in the home country of the credit institution.

(4) The authority, in Estonia, of a person applying reorganisation measures with respect to a credit institution of a contracting state or branch thereof, or a branch founded in such contracting state by a third country credit institution shall be certified by a certified copy of the decision on appointment of such person or other appropriate certificate issued by the administrative authority or court of the relevant contracting state. The document specified above shall be accompanied by a translation into the Estonian language.

(5) A person applying reorganisation measures specified in subsection (4) of this section has the right to exercise, in Estonia, the same powers he or she is authorised to exercise in the relevant contracting state. In addition to the above, he or she may appoint persons to assist or where necessary, represent him or her in the process of reorganisation. Upon exercising his or her rights, sale of assets and notification of workers, a person applying reorganisation measures shall adhere to the provisions of legislation of Estonia. A person applying reorganisation measures has no right to apply coercive measures upon exercising his or her rights or to make decisions on matters that are subject to court action.

(6) A person applying reorganisation measures specified in subsection (4) of this section is required to perform, under the conditions and to the extent provided in Estonian law, the acts necessary for making entries in Estonian public registers.

(7) Upon becoming aware of implementation of reorganisation measures with respect to a credit institution of a contracting state or branch thereof founded in Estonia, or a branch founded in Estonia by a third country credit institution, the Financial Supervision Authority shall promptly publish a notice to this effect in at least one national newspaper and on its website.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 115³. Information concerning establishment of moratorium in respect to Estonian credit institution

(1) The Financial Supervision Authority shall immediately notify the financial supervision authorities of the contracting states where the relevant credit institution has branches of its decision to establish a moratorium in respect of the credit institution with branches in other contracting states, or of a court decision to commence bankruptcy proceedings against such credit institution. Information on the practical consequences of material importance arising from establishment of the moratorium or commencement of bankruptcy proceedings shall be added to such notice. The notification obligation shall not be applied if the Financial Supervision Authority has already submitted the respective notification on the basis of § 50 of the Financial Crisis Prevention and Resolution Act.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(2) If implementation of moratorium or commencement of bankruptcy proceedings with respect to a credit institution is likely to affect third party interests in a contracting state where a branch of the credit institution is founded and such decision can be contested, the Financial Supervision Authority shall promptly publish an excerpt of the decision in the Official Journal and at least two national newspapers in each contracting state where a branch of the credit institution is founded.

(3) The excerpt of the decision specified in subsection (2) of this section shall be published in the official language or one of the official languages of the relevant contracting state. The excerpt shall include the objective and legal basis of the decision, the term and deadline for submission of complaints and the full address of the court competent to review the complaints. The deadline for submission of complaints must be indicated in a clear and understandable manner.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 115⁴. Cooperation with financial supervision authority of contracting states

(1) The Financial Supervision Authority shall notify the financial supervision authority of the home country of such credit institution of the necessity to apply a reorganisation measure or reorganisation measures with respect to the branch founded in Estonia by the credit institution of the contracting state. The notification obligation shall not be applied if the Financial Supervision Authority has already submitted the respective notification on the basis of § 50 of the Financial Crisis Prevention and Resolution Act.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(2) The Financial Supervision Authority shall give an immediately notice of its decision to establish a moratorium in respect of a branch of a third country credit institution to the financial supervision authorities of the contracting states where are located the credit institution's other branches entered in the respective list on the basis of Article 20 of Directive 2013/36/EC of the European Parliament and of the Council. Information on the practical consequences of material importance arising from establishment of the moratorium shall be added to such notice.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(3) For application of measures necessary to conduct a moratorium with respect to a branch of a third country credit institution, the Financial Supervision Authority shall cooperate with the financial supervision authorities specified in subsection (2) of this section.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

Chapter 10²

EXPROPRIATION OF HOLDING IN CREDIT INSTITUTION

§ 115⁵. Expropriation of holding

(1) Expropriation of a holding in a credit institution is expropriation of a holding in common interests for fair compensation (hereinafter compensation) without the approval of the shareholders.

(2) For the purposes of this Chapter a credit institution is a company that is registered in Estonia and granted activity licence by the Financial Supervision Authority specified in § 13 of this Act.

(3) For the purposes of this Act the subject of expropriation is a shareholder whose holding in the credit institution is expropriated and the expropriating authority (hereinafter expropriating authority) is the state as the acquirer of the expropriated share.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115⁶. Bases for expropriation of holding

(1) Expropriation can only be carried out in order to ensure the stability of the financial system of Estonia and with the purpose of managing the risks related thereto, primarily for preservation of the financial resources of the depositors of a credit institution and for protection of their interests and in case the measures to achieve the objective specified above are inappropriate or inadequate.

(2) A holding in a credit institution can be expropriated if the acts or omission of a credit institution may alone or in conjunction with other factors endanger the stability of the financial system of Estonia or cause significant disturbances in the payment and accounting systems and there exists at least one of the following conditions:

- 1) the credit institution does not meet the prudential ratios applied to the significant extent;
- 2) the credit institution does not meet the obligations provided in subsections 80 (1), (2) or (4) and cannot satisfy the justified claims of the depositors and other creditors;
- 3) the credit institution is not managed securely or reliably with the prudence and competence expected from its managers, and the management is not based on the interests of the credit institution, the depositors thereof or other clients, creating thereby material risks to the continuity of the economic activity of the credit institution or to its business continuity.

(3) The existence of the bases for expropriation provided in subsection (2) of this section does not preclude implementation of other measures provided in the Act in order to ensure the stability of the financial system.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115⁷. Application of Acts

(1) The provisions of the Act that prohibit the transfer or distribution of a holding in a credit institution or impose restrictions on a holding or any rights of third parties do not preclude expropriation:

(2) The provisions of Chapter 29¹ concerning the assumption of shares do not apply to the expropriation proceedings.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115⁸. Commencement of expropriation

(1) In case the conditions specified in subsection 115⁶(1) and (2) of this Act exist, the Ministry of Finance may commence the expropriation proceeding and prepare the draft expropriation decision, hearing first the opinion of Eesti Pank.

(2) In case the information about the existence of the conditions specified in subsection 115⁶(1) and (2) of this Act was not submitted by the Financial Supervision Authority, the Ministry of Finance shall request the opinion of the Financial Supervision Authority about commencement of expropriation of a holding in a credit institution.

(3) Upon commencement of the expropriation proceeding the Ministry of Finance notifies immediately the management board of the credit institution to be expropriated and the shareholders whose holding shall be expropriated, sending a notice specified in subsection 115⁹(1) of this Act to them at the address entered into the share register.

(4) The Ministry of Finance shall immediately notify the Estonian Central Securities Depository of the commencement of the expropriation proceeding. On the basis of the notice the Estonian Central Securities Depository shall make an entry concerning a temporary restriction on the disposal of the shares or the accounts related to the shares of a credit institution whose holding is being expropriated. The entry shall be deleted on other basis provided for in subsection 115¹⁰(1) or subsection 115¹¹(4) of this Act or subsection 17 (3) of the Securities Register Maintenance Act.

[RT I, 26.06.2017, 1 - entry into force. 06.07.2017]

(5) The Financial Supervision Authority shall notify the financial supervision authority of a foreign state that carries out consolidated supervision over the credit institution or supervision over the subsidiary of the credit institution about commencement of expropriation proceedings after becoming aware thereof.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115⁹. Notice of commencement of expropriation proceeding

(1) The notice about commencement of expropriation proceeding shall set out:

- 1) business name, seat and registry code of the credit institution;
- 2) the names of persons who have a qualifying holding in a credit institution and with respect to whose holding the expropriation proceeding has been commenced, and if existent, their registry codes or personal identification codes or, in the absence thereof, their dates of birth, and also the names of the remaining shareholders;
- 3) the number of shares in the credit institution and of the shares to be expropriated and the number of shares to be expropriated by shareholders;
- 4) the expected date of making a decision on expropriation of shares specified in § 115¹¹ of this Act;
- 5) the term during which a shareholder has the right to submit an opinion of the expropriation, objection to or acceptance of the offer if the offer has been appended in the notice;
- 6) other relevant circumstances related to expropriation.

(2) The term provided in clause (1) 5) of this section cannot be longer than three days as of the receipt of the respective notice.

(3) The right to a hearing of the opinion and objections shall not be applied if it is connected to disproportionate expenses or it does not allow achieving the objective of the expropriation.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹⁰. Agreement

(1) An agreement has been concluded between the subject of expropriation and the expropriating authority for expropriation of the shares of the subject of expropriation to the expropriating authority if the subject of expropriation grants acceptance to the offer provided in clause 115⁹(1) 5) of this Act and the Government of the Republic has approved thereof.

(2) The provisions of subsection (1) of this section do not preclude the conclusion of an agreement between the object of expropriation and the expropriating authority for expropriation and acquisition of shares in any other manner.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹¹. Decision on expropriation

(1) Partial expropriation of a holding in a credit institution shall be decided by the Government of the Republic according to the circumstances specified in subsections 115⁶(1) and (2) of this Act.

(2) The order of expropriation by the Government of the Republic shall set out:

- 1) the provisions of clauses 115⁹(1) 1) and 2) of this Act;
- 2) the number of shares of a credit institution and the number of shares to be expropriated;
- 3) the justifications of expropriation together with the legal basis and the considerations on which the decision-making is based including the position of the Financial Supervision Authority and Eesti Pank on the commencement of the expropriation and the opinions and objections of the subjects of expropriations submitted before making the decision;
- 4) the amount of compensation if the assessment of the financial situation of the credit institution has been carried out by the time of making the decision on expropriation;
- 5) other relevant information subject to disclosure related to expropriation unless otherwise provided by law.

(3) The order shall be published in Riigi Teataja and thereby is deemed to have been delivered to the shareholders of the credit institution to be expropriated.

(4) Upon entry into force of the decision and transfer of the shares pursuant to provisions of § 115¹² of this Act the ownership of the expropriated shares is deemed to have transferred to the expropriating authority.

(5) Upon entry into force of the order on expropriation, the shareholders' rights of the subject of the expropriation and all the rights of the subject of the expropriation and the third parties with regard to the shares of a credit institution existent or to be issued shall terminate, including the rights provided in subsection 226¹(1), 241¹(1), § 346 and 351¹(3) of the Commercial Code.

(6) In a case of the expropriation of a holding in a credit institution the Government of the Republic shall decide on appointing a manager of the expropriated shares in compliance with the State Assets Act.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹². Transfer of shares

(1) Upon entry into force of the decision of the Government of the Republic the Ministry of Finance shall immediately notify the Estonian Central Securities Depository thereof for the transfer of the expropriated shares to the expropriating authority.
[RT I, 26.06.2017, 1 – entry into force 06.07.2017]

(2) The registrar of the Estonian Central Securities Depository shall delete the third party rights with regard to the expropriated shares before the transfer of the shares provided in subsection (1) of this section to the expropriating authority.
[RT I, 26.06.2017, 1 – entry into force 06.07.2017]

(3) The registrar of the Estonian Central Securities Depository shall transfer the shares expropriated on the basis of the decision specified in subsection (1) of this section to the securities account of the Ministry of Finance.
[RT I, 26.06.2017, 1 – entry into force 06.07.2017]

§ 115¹³. Compensation and payment thereof

(1) Unless the Government of the Republic has fixed the compensation provided in clause 11511 (2) 4) of this Act, it shall be determined according to subsection 115¹⁵(3) at the latest within one month as of the entry into effect of the decision on expropriation.

(2) The compensation shall be determined according to the assessment report provided in 11515 of this Act.

(3) Upon determination of the compensation the value of the expropriated holding of a credit institution is calculated as of the moment of the commencement of expropriation.

(4) The subjects of expropriation shall be treated uniformly upon determination and payment of compensation.

(5) The compensation shall be paid to the subject of the expropriation within a reasonable period of time but not later than within three months from the grant of compensation. From the entry into force of the decision on expropriation the expropriating authority is required to pay to the subject of expropriation an interest on the amount of the compensation to be paid pursuant to provisions of subsection 94 (1) of the Law of Obligations Act.

(6) Compensation shall be paid in cash or securities.

(7) The subject of expropriation has no right with regard to expropriation to demand compensation of such loss of profit from shares that was created due to act or omission of the credit institution that was impossible to predict during expropriation.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹⁴. Assessment of financial situation of credit institution

(1) The objective of the assessment of the financial situation of a credit institution (hereinafter in this section assessment) is to ascertain the amount of compensation to be granted to the subject of expropriation.

(2) The assessment shall be conducted by the Ministry of Finance in cooperation with the Financial Supervision Authority, involving experts if necessary.

(3) The assessment shall be checked by an auditor whose opinion or report shall include an opinion of the financial situation of the credit institution, the method used for assessment and an opinion whether the method used is appropriate for determining the amount of compensation.

(4) Assessment of the assets of a credit institution is first and foremost based on the amount of the assets of a credit institution which would be distributed between the shareholders on liquidation of the credit institution according to the nominal value of the shares after all the claims of the creditors of a credit institution have been satisfied or guaranteed and the money needed to satisfy or guarantee the claims has been deposited and the related charges thereof have been paid.

(5) If the shares to be expropriated have been accepted for trading at the regulated securities market or into a multilateral trading facility, the assessment of the value of a share may also take into account the weighted average share price for ten trading days preceding the date of commencement of expropriation proceeding.

(6) The non-returnable financial resources and guarantees that the state or other person in public law has given to the credit institution before commencement of the expropriation proceeding for maintenance or recovery of liquidity or solvency shall not be taken into account of upon assessment.

(7) A credit institution is required to allow the persons conducting the assessment to examine all the documents needed for assessment of a credit institution and of the companies belonging in the same consolidation group, in any data medium, and to examine all the assets of the credit institution and the companies, and is required to provide other necessary information, including explanations. The persons conducting the assessment may use the documents, information and explanations that have been received for assessment only for assessment and determination of the value of the expropriated shares and for determination of the compensation, and they are required to maintain the confidentiality of the documents, information and explanations received. A credit institution is required to meet the obligation provided in subsection 115¹⁷(2) of this Act also with regard to the proceedings and acts of the persons conducting the assessment.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹⁵. Assessment report of financial situation of credit institution

- (1) An assessment report is prepared for assessment of the financial situation of a credit institution.
- (2) An assessment report shall include an opinion regarding:
 - 1) the financial situation, performance and cash flows of the credit institution whose holding is being expropriated;
 - 2) the assessment of the value of shares and the methods therefor;
 - 3) the proposal for compensation payable to the subjects of expropriation.
- (3) The Government of the Republic shall approve of the assessment report, which is confidential and is not subject to disclosure, except the amount of compensation.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹⁶. Third party rights

- (1) A third party has the right to demand compensation for damages caused by expropriation on the basis of the provisions of the Law of Obligations Act.
- (2) A third party has no right to demand compensation for such loss of profit that arose due to act or omission of the credit institution and which was impossible to predict during expropriation.
- (3) Expropriation shall not affect the third party rights and obligations with regard to the credit institution or the rights and obligations of the credit institution with regard to third parties, not specified in subsection 115¹¹(5) of this Act.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹⁷. Rights of Financial Supervision Authority

- (1) The Financial Supervision Authority has the rights provided in §§ 99-102 of this Act to get information for assessment of the financial situation as provided in § 115¹⁴ of this Act.
- (2) The persons specified in subsection 99 (1) of this Act are obliged to maintain confidentiality of the information about carrying out and submission, performance or non-performance by a participant in proceeding of the administrative act and administrative proceeding directed to them by the Financial Supervision Authority, and about the contents of such administrative act and administrative proceeding.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

§ 115¹⁸. Disputes related to compensation

- (1) The decision on expropriation cannot be deemed invalid for the reason that the compensation determined was too low.
- (2) If the compensation payable to the subject of expropriation was granted too low, the court may determine a new compensation at the request of the subject of expropriation. The grant of compensation by a court does not affect the transfer of the expropriated holding.
- (3) The disputes concerning the grant of compensation shall be reviewed in a civil procedure. Any complaint concerning the grant of compensation shall be filed with the court within 14 days as of the date of publication of the administrative act.
[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

Chapter 11

TERMINATION OF CREDIT INSTITUTION

Division 1 Voluntary Dissolution and Compulsory Dissolution

§ 116. Methods of dissolution of credit institution

(1) A credit institution shall be dissolved:

- 1) by a resolution of the general meeting of shareholders or members of the credit institution, on the basis of Acts and the articles of association of the credit institution (voluntary dissolution);
- 2) on the initiative of the Financial Supervision Authority, on the basis of a court judgment (compulsory dissolution);

[RT I 2008, 59, 330 - entry into force 01.01.2009]

- 3) in the case of insolvency pursuant to this Act and the Bankruptcy Act.

(1¹) A decision to dissolve a credit institution enters into force in all contracting states simultaneously with the entry into force of such decision in Estonia. The decision and the consequences thereof are valid under the same conditions and to the same extent in Estonia as well as in other contracting states.

(2) A credit institution may be voluntarily or compulsorily dissolved on the condition that the assets thereof are adequate to satisfy the justified claims of all creditors in full.

(3) If, during liquidation proceedings, it becomes evident that the assets of the credit institution are not adequate to satisfy the justified claims of all creditors in full, the liquidators shall suspend their activities and commence bankruptcy proceedings, and shall notify the Financial Supervision Authority thereof in advance in writing.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 117. Voluntary dissolution

(1) In order to decide on the dissolution of a credit institution at the general meeting of shareholders or members, an overview of the economic activities of the credit institution during the current year and of the financial situation of the credit institution shall be submitted to the general meeting by the management board. The overview shall set out the term and funds for satisfaction of the justified claims of all creditors in full by the credit institution.

(2) In co-ordination with the supervisory board, the management board of a credit institution is required to submit, at least fifteen days before the date of the general meeting, an application for authorisation for voluntary dissolution of the credit institution together with the data specified in subsection (1) of this section to the Financial Supervision Authority. The Financial Supervision Authority may establish a term for satisfaction of all claims of depositors.

(3) The Financial Supervision Authority shall grant authorisation to a credit institution for voluntary dissolution only on the condition that the credit institution is able to satisfy the justified claims of all creditors in full not later than within three months after the date of publication of the liquidation notice.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 118. Compulsory dissolution

(1) A credit institution shall be dissolved by a court ruling on the basis of a petition of the Financial Supervision Authority if the authorisation of the credit institution has been revoked by the Financial Supervision Authority.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

(2) Evidence concerning circumstances provided for in § 17 of this Act shall be submitted to the court together with a petition.

(3) A court shall decide on the compulsory liquidation of a credit institution promptly but not later than within three working days after submission of the corresponding petition.

(4) [Repealed – RT I 2008, 59, 330 - entry into force 01.01.2009]

(4¹) The provisions of subsection 366 (3) of the Commercial Code do not apply to the case specified in subsection (1) of this section.

[RT I 2010, 2, 3 - entry into force 22.01.2010]

(5) A ruling on compulsory liquidation shall be executed promptly, and the filing of and proceedings regarding an appeal do not suspend the activities of liquidators.

§ 119. Requirements for liquidators

(1) At least three persons who have experience in the banking field or higher education in law shall be elected or appointed liquidators and at least one of them shall meet the requirements specified in subsection 56 (2) of this Act.

(2) Liquidators shall remain impartial upon performance of their duties. At the request of the Financial Supervision Authority, a liquidator shall submit information concerning his or her personal and economic interests and any conflicts of such interests. The content of the information shall be determined and the procedure for submission thereof shall be established by Eesti Pank on the basis of this Act.

(3) The Financial Supervision Authority has the right to intervene in the activities of liquidators and demand, through a court, the appointment of new liquidators if data exists to show that the activities of the liquidators are not in compliance with law or that the claims of creditors are not satisfied objectively.

(4) Liquidators shall receive remuneration corresponding to their tasks from the funds of the credit institution being liquidated but not more than the average remuneration of the members of the management boards of an operating credit institution. Remuneration paid to assistants to liquidators, including experts and auditors, shall not exceed the average remuneration paid by an operating credit institution to persons working or operating in corresponding positions.

(5) The authority of liquidators in a contracting state shall be proven by the certified transcript of the decision on their election or appointment together with the translation of the decision into the official language or one of the official languages of the relevant contracting state.

(6) A liquidator has the right to exercise, in a contracting state, the same powers he or she is authorised to exercise in Estonia. In addition to the above, he or she may appoint persons to assist or where necessary, represent him or her in the process of liquidation. Upon exercising his or her rights, sale of assets and notification of workers, a liquidator shall adhere to the provisions of legislation of the relevant contracting state. A liquidator has no right to apply coercive measures upon exercising his or her rights or to make decisions on matters that are subject to court action.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 120. Duties and tasks of liquidators

Liquidators are required to:

- 1) carry out a full inventory of all assets of the credit institution as of the date of entry into force of the dissolution resolution;
- 2) publish a notice of the liquidation proceedings of the credit institution in at least two national newspapers on two occasions with an interval of two weeks;
- 3) notify in writing all known creditors of the credit institution of the liquidation proceedings and to specify the credit institution through which claims shall be paid;
- 4) demand that all known creditors submit the balance confirmations of their financial claims within two months from the date of publication of the first liquidation notice in a newspaper;
- 5) notify correspondent banks promptly of the dissolution resolution and close correspondent accounts and where necessary or provided by the legislation of the relevant contracting state, send a notice concerning the dissolution resolution to the registrars of public registers of the contracting states where the branches of the credit institution are founded;
- 6) submit activity reports and a final balance sheet pursuant to the procedure established by Eesti Pank.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 121. Submission and satisfaction of claims of creditors

(1) [Repealed - RT I 2005, 39, 308 - entry into force 01.01.2006]

(2) Liquidators have the right to demand additional data and documents from all known creditors in order for the debt-claims of the creditors to be proven.

(3) The provisions of subsection 379 (3) and § 380 of the Commercial Code do not apply to credit institutions.

Division 2

Bankruptcy of Credit Institutions

§ 122. Receipt of bankruptcy caution

A credit institution is required to notify the Financial Supervision Authority promptly, but not later than on the following working day, of the receipt of a bankruptcy caution specified in clause 10 (2) 1) of the Bankruptcy Act from a creditor.

[RT I 2003, 17, 95 - entry into force 01.01.2004]

§ 123. Submission of bankruptcy petition

(1) A bankruptcy petition against a credit institution may be submitted by:

- 1) the creditors;
- 2) the liquidators in the cases prescribed by law;
- 3) the Financial Supervision Authority.

(2) An operating credit institution which is a debtor may submit a bankruptcy petition only with the written consent of the Financial Supervision Authority.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 124. Submission of bankruptcy petition by Financial Supervision Authority

(1) The Financial Supervision Authority has the right to submit a bankruptcy petition against a credit institution regardless of whether the Financial Supervision Authority is a creditor of the credit institution.

(2) In addition to the grounds prescribed in § 1 of the Bankruptcy Act, the Financial Supervision Authority also has the right to submit a bankruptcy petition if the credit institution fails to satisfy a justified claim of at least one client and the Financial Supervision Authority has adequate data concerning the insolvency of the credit institution.

[RT I 2003, 17, 95 - entry into force 01.01.2004]

§ 125. Commencement of bankruptcy proceedings and hearing of petitions

(1) A court shall promptly decide on the commencement of bankruptcy proceedings with regard to a credit institution but not later than within three working days after submission of the bankruptcy petition.

(2) The provisions of §§ 17-24 of the Bankruptcy Act do not apply if the bankruptcy petition against a credit institution is submitted by the Financial Supervision Authority. A court shall hear a bankruptcy petition promptly but not later than on the following working day and decide on the declaration of bankruptcy on the basis of evidence annexed to the bankruptcy petition.

(3) On the basis of a petition by a creditor or liquidators, a court shall hold a preliminary hearing for the commencement of bankruptcy proceedings with regard to a credit institution. A representative of the Financial Supervision Authority shall be summoned to a preliminary hearing to give his or her opinion on the commencement of bankruptcy proceedings with regard to the credit institution.

(4) A court shall hear a bankruptcy petition specified in subsection (3) of this section not later than within seven calendar days as of the commencement of the bankruptcy proceedings.

(5) The court ruling on the commencement of bankruptcy proceedings and bankruptcy order enter into force in all contracting states simultaneously with the entry into force thereof in Estonia. The court ruling and order specified above and the consequences thereof are valid under the same conditions and to the same extent in Estonia as well as in other contracting states.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 126. Appointment of interim trustee and trustees in bankruptcy

(1) A court shall appoint the interim trustee and trustees in bankruptcy of a credit institution on the proposal of the Financial Supervision Authority.

(2) At least three trustees in bankruptcy shall participate in the bankruptcy proceedings of a credit institution and at least one of them must meet the requirements provided for in subsection 56 (2) of this Act. The provisions of § 61 of the Bankruptcy Act do not apply to bankruptcy proceedings of credit institutions.

(3) A court shall release a trustee in bankruptcy at his or her request. The trustee in bankruptcy shall notify the Financial Supervision Authority of his or her request thirty days in advance and shall submit an activity report.

(4) If a trustee in bankruptcy has failed to perform his or her duties or has not performed them adequately, a court shall release the trustee in bankruptcy on the basis of a petition by the Financial Supervision Authority or a resolution of the bankruptcy committee.

(5) If a trustee in bankruptcy is released, a new trustee in bankruptcy shall be appointed pursuant to the procedure prescribed in subsection (1) of this section.

(6) Information specified in subsection 119 (2) of this Act shall be submitted to the court and the Financial Supervision Authority by an interim trustee or a trustee in bankruptcy within seven days after his or her appointment.

(7) The provisions of the second sentence of subsection 65 (5) of the Bankruptcy Act do not apply to determination of the remuneration of a trustee in bankruptcy of a credit institution. The provisions of subsection 119 (4) of this Act apply to payment of remuneration to assistants to a trustee in bankruptcy, including experts and auditors.

(8) The authority of the interim trustee or a trustee in bankruptcy of a credit institution in a contracting state shall be proven by the certified transcript of the court judgment or ruling concerning their appointment together with the translation of such document into the official language or one of the official languages of the relevant contracting state.

(9) The interim trustee or a trustee in bankruptcy has the right to exercise, in a contracting state, the same powers he or she is authorised to exercise in Estonia. In addition to the above, he or she may appoint persons to assist or where necessary, represent him or her in the course of the bankruptcy proceedings. Upon exercising his or her rights, sale of assets and notification of workers, the interim trustee or a trustee in bankruptcy shall adhere to the provisions of legislation the relevant contracting state. The interim trustee or a trustee in bankruptcy has no right to apply coercive measures upon exercising his or her rights or to make decisions on matters which are subject to court action.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 127. Duties of interim trustee

(1) An interim trustee shall, pursuant to the principle of conservatism, ascertain the true and fair value of the assets of the credit institution which is a debtor and submit the relevant documents to the court together with his or her report.

(2) If a credit institution is the parent company of a consolidation group, the interim trustee is required to ascertain the net assets of the consolidation group in the manner specified in subsection (1) of this section.

(3) The interim trustee shall organise execution of payment orders accepted by the credit institution before the commencement of bankruptcy proceedings, pursuant to the procedure provided for in § 87 of this Act.

(4) Upon performance of his or her duties, an interim trustee has the right to cooperate with and receive information and documents from the Financial Supervision Authority and the auditors of the credit institution.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 128. Duties of trustees in bankruptcy

(1) A trustee in bankruptcy shall notify the depositors, other clients and the creditors of the bankruptcy regulation and perform the duties prescribed in the Guarantee Fund Act.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(2) The trustee in bankruptcy shall promptly notify correspondent banks of the bankruptcy regulation and close correspondent accounts and, where necessary or provided by the legislation of the relevant contracting state, send a notice concerning the bankruptcy regulation to the registrars of public registers of the contracting states where the branches of the credit institution are founded.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(3) A trustee in bankruptcy shall organise execution of payment orders accepted by a credit institution before the commencement of bankruptcy proceedings, pursuant to the procedure provided for in § 87 of this Act.

(4) A trustee in bankruptcy is required to deposit funds pursuant to the procedure specified by the bankruptcy committee.

(5) A trustee in bankruptcy of a credit institution is required to submit activity reports at the request of the Financial Supervision Authority but not less frequently than once every three months. The format of the reports shall be established by the Financial Supervision Authority.

§ 129. Bankruptcy committee

(1) The bankruptcy committee of a credit institution shall consist of at least five members, at least one of whom shall be appointed by the Guarantee Fund and one by the Financial Supervision Authority.

(2) A court shall appoint the bankruptcy committee of a credit institution on the proposal of a trustee in bankruptcy and the Financial Supervision Authority.

(3) The provisions of subsections 74 (1), (5) and (7) of the Bankruptcy Act do not apply to bankruptcy proceedings of credit institutions.

[RT I 2003, 17, 95 - entry into force 01.01.2004]

§ 130. Claims in bankruptcy proceedings of credit institutions

(1) The following shall be released from the obligation to submit a proof of claim:

- 1) the Guarantee Fund, to the extent of compensation paid on the basis of the Guarantee Fund Act;
- 2) depositors whose deposits are guaranteed pursuant to the procedure and to the extent prescribed in the Guarantee Fund Act, in claims to the extent not compensated by the Guarantee Fund, if the amount of the deposit exceeds the limit provided for in subsection 25 (2) or §§ 110 and 111 of the Guarantee Fund Act and if they have submitted the positions prescribed in subsection 38 (3) of the Guarantee Fund Act.

(2) The provisions of subsections 99 (1) and (2) of the Bankruptcy Act may be applied in the bankruptcy proceedings of a credit institution after the last meeting for the defence of claims is held.

[RT I 2003, 17, 95 - entry into force 01.01.2004]

§ 131. Specifications regarding priority of claims

(1) After the payments specified in subsection 146 (1) of the Bankruptcy Act have been made the claims of creditors shall be satisfied in the following order of priority:

- 1) accepted claims secured by a pledge to the extent provided for in subsection 153 (2) of the Bankruptcy Act;
- 2) the claims of the Guarantee Fund which have arisen on the basis of the right of recourse with regard to the rights and liabilities of such depositors whose deposits have been compensated by the Guarantee Fund;
- 3) claims arising from the deposits of natural persons and microenterprises, small and medium-sized enterprises which are subject to guarantee by the Guarantee Fund in the part which exceeds the limits for compensation of deposits specified in subsection 25 (2) of the Guarantee Fund Act, as well as claims arising from such deposits arising from the deposits of natural persons and microenterprises, small and medium-sized enterprises which are not deemed to be guaranteed deposits just because they have been opened through the branches of the Estonian credit institutions, based in third countries;
- 4) other accepted claims submitted on time;
- 5) not submitted on time but accepted other claims.

[RT I, 19.03.2015, 3 - entry into force 29.03.2015]

(2) Accepted claims of a credit institution which arise from own funds provided for in Articles 24-26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council shall be satisfied after satisfaction of claims which are not filed on time but are accepted.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 132. Specifications regarding formation of bankruptcy estate

(1) Collateral instruments of payments shall not be included in the bankruptcy estate of a credit institution in the amount which is necessary for execution of payment orders accepted by the credit institution before the commencement of bankruptcy proceedings.

(2) Assets removed from the ownership of a debtor in accordance with the provisions of subsection 114 (2) or (4) of this Act during a moratorium of a credit institution or in accordance with the provisions of § 87 of this Act during bankruptcy proceedings are not subject to recovery.

§ 133. Sale of bankruptcy estate

(1) A trustee in bankruptcy has the right to sell the set of assets of the credit institution with the consent of the bankruptcy committee on the condition that the buyer secures all the claims of creditors.

(2) If the assets of a credit institution cannot be sold in any other manner, the general meeting of creditors may, by a resolution, issue a precept to a trustee in bankruptcy for the sale of the assets of the credit institution to creditors by way of payment with the claims thereof, in proportion to the claims defended by them. At least three-quarters of the creditors present must vote in favour of the specified resolution and their claims must make up at least two-thirds of the amount of all claims.

§ 134. Reorganisation and compromise of credit institution

(1) The reorganisation plan of a credit institution may be submitted by a trustee in bankruptcy to the general meeting of creditors for approval only with the consent of the Financial Supervision Authority.

(2) A compromise may be made in the course of the bankruptcy proceedings of a credit institution only with the consent of the Financial Supervision Authority. In order to resume activities, a credit institution shall obtain new authorisation pursuant to the provisions of Chapter 2 of this Act.

[RT I 2005, 13, 64 - entry into force 18.03.2005]

Division 3

Liquidation of Credit Institutions Operating in Several States

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134¹. Law applicable to liquidation proceedings

(1) For the purpose of this Division, liquidation proceedings shall mean proceedings commenced by an administrative authority or court of another contracting state, in the course of which the claims of the creditors are satisfied out of the assets of a credit institution of such contracting state or a branch thereof, or a branch founded in such contracting state by a third country credit institution, and other acts are performed which are necessary for the dissolution of the credit institution of that contracting state or a branch thereof, or a branch founded in such contracting state by a third country credit institution, including proceedings which are terminated with the consent of the creditors, by approval of a compromise or based on another similar agreement.

(2) The provisions of this section concerning liquidation proceedings also apply to liquidation proceedings of Estonian credit institutions in the case of voluntary as well as compulsory dissolution, to bankruptcy proceedings following a bankruptcy regulation with respect to such credit institution, and to revocation of authorisation for the foundation of a branch in Estonia of a third country credit institution.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(3) Liquidation proceedings in respect of a credit institution of a contracting state or its branches shall be applied in adherence to the law of the home country of the credit institution unless otherwise provided for in this section.

(4) The provisions of subsections 115¹(4)-(14) of this Act correspondingly apply to determination of the law applicable to liquidation proceedings.

(5) In the cases provided by subsections (2) and (3) of this section, above all the following shall be determined by the law of the relevant state:

1) the composition of assets of the credit institution of Estonia or another contracting state and branches thereof founded in contracting states, or a branch founded by a third country credit institution in Estonia undergoing liquidation (hereinafter in this section credit institution or branch of credit institution), and the legal status of the assets acquired by the credit institution or branch of a credit institution after the commencement of liquidation proceedings;

2) the rights and obligations of a credit institution or branch of a credit institution, and of the liquidators;

3) conditions for setting off claims;

4) effect of the liquidation proceedings on contracts in which one of the parties is the credit institution or branch of credit institution;

5) the effect of liquidation proceedings on proceedings initiated by creditors, except on court cases before Estonian courts concerning assets or rights transferred from the credit institution or branch of credit institution;

6) claims asserted against the credit institution or branch of credit institution and conditions for conduct of proceedings concerning the claims submitted after commencement of liquidation proceedings;

7) notification, verification and acceptance of claims;

8) distribution of money received from the sale of assets, rankings of claims and rights of creditors if their claims are only partially satisfied as a result of sale of securities related to real rights or as a result of set-off;

9) conditions and effect of termination of liquidation proceedings, including in the case of compromise;

10) rights of creditors after termination of liquidation proceedings;

11) the person required to bear the expenses incurred in the course of liquidation proceedings;

12) the procedure for declaration invalid or subject to recovery of legal acts damaging to the creditors as a whole.

(6) Clause (5) 12) of this section is not applied if the person who benefited from the legal act specified above certifies that the law of a contracting state other than the home country of the credit institution applies to the legal act and pursuant to such law, no basis exists for contestation of the legal act.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134². Implementation of liquidation proceedings

(1) Only an administrative authority or court of the home country of the relevant credit institution has the right to commence liquidation proceedings with respect to a credit institution of a contracting state or a branch thereof founded in Estonia.

(2) A decision to commence liquidation measures with respect to a credit institution of a contracting state or a branch thereof founded in Estonia enters into force in Estonia simultaneously with the entry into force of such decision in the home country of the credit institution.

(3) Liquidation proceedings applied with respect to a credit institution of a contracting state or a branch thereof founded in Estonia are valid under the same conditions and to the same extent in Estonia as well as in the home country of the credit institution.

(4) The authority, in Estonia, of a person applying liquidation proceedings shall be proven by the certified transcript of the decision on appointment of such person or other appropriate certificate issued by the administrative authority or court of the relevant contracting state. The document specified above shall be accompanied by a translation into the Estonian language.

(5) The person applying liquidation proceedings specified in subsection (4) of this section has the right to exercise, in Estonia, the same powers he or she is authorised to exercise in the relevant contracting state. In addition to the above, he or she may appoint persons to assist or where necessary, represent him or her in the course of the liquidation proceedings. Upon exercising his or her rights, sale of assets and notification of workers, a person applying liquidation proceedings shall adhere to the provisions of legislation of Estonia. A person applying liquidation proceedings has no right to apply coercive measures upon exercising his or her rights or to make decisions on matters which are subject to court action.

(6) A person applying liquidation proceedings specified in subsection (4) of this section is required to perform, under the conditions and to the extent provided in Estonian law, the acts necessary for making entries in Estonian public registers.

(7) After becoming aware of the implementation of liquidation proceedings with respect to a credit institution of a contracting state or branch thereof founded in Estonia, or a branch founded in Estonia by a third country credit institution, the Financial Supervision Authority shall promptly publish a notice to this effect in at least one national newspaper and on its website.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134³. Information of liquidation of Estonian credit institutions

(1) The Financial Supervision Authority shall promptly notify the financial supervision authorities of the contracting states where the relevant credit institution has branches of its decision to initiate compulsory dissolution of the credit institution with branches in the contracting states or to grant authorisation to such credit institution for voluntary dissolution, or of a court decision to compulsorily dissolve such credit institution or to declare such credit institution bankrupt. Information on the practical consequences arising from the liquidation proceedings shall be added to such notice.

(2) In addition to the information specified in subsection (1) of this section, the Financial Supervision Authority shall publish an excerpt of the corresponding decision of the Financial Supervision Authority or a court in the Official Journal and at least two national newspapers in each contracting state where a branch of the credit institution is founded.

(3) If, after commencement of liquidation proceedings against an Estonian credit institution, an obligation due to the credit institution is performed in another contracting state to the credit institution in lieu of the liquidator, such obligation is deemed to be performed if the person who performed the obligation was not and did not have to be aware of commencement of the liquidation proceedings. It shall be presumed that the person who performed the obligation was not and did not have to be aware of commencement of the liquidation proceedings if the obligation was performed before publication of the excerpt provided in subsection (2) of this section.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134⁴. Notification of creditors located in contracting states of liquidation of Estonian credit institutions

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(1) In addition to the requirements provided in §§ 120 and 128 of this Act, liquidators or trustees in bankruptcy are required to promptly inform all known creditors of the credit institution located or residing in other contracting states of the commencement of liquidation proceedings or a bankruptcy order in respect of the credit institution.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(2) A notice specified in subsection (1) of this section shall contain at least the following information:

- 1) time-limits of proceedings and sanctions in the case of failure to adhere thereto;
- 2) the names of bodies or agencies competent to receive claims;
- 3) other relevant information concerning the measures planned under the liquidation or bankruptcy proceedings if absence of such information may prevent a creditor from exercising his rights;
- 4) information on whether a creditor is required to file a claim even if the claim is preferential or if the claim is secured by a real right.

[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) Liquidators and trustees in bankruptcy are required to regularly inform the creditors about circumstances which become evident in the course of liquidation or bankruptcy proceedings which the creditors should be aware of in order to protect their interests.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134⁵. Languages

(1) The information specified in subsection 134³(2) and § 134⁴ of this Act shall be provided in Estonian. For such purpose, a standard format shall be used bearing the title "Notice on filing of claims. Established terms" in the official languages of all contracting states.

(2) Creditors residing or located in a contracting state are permitted to file their claims in the official language or one of the official languages of such contracting state. In such case the claim submitted by the creditor shall bear the Estonian title "Nõude esitamine" [filing of claim]. A liquidator or trustee in bankruptcy may require that the creditor submit a translation of the claim into the Estonian language.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134⁶. Cooperation with financial supervision authorities of contracting states

(1) The Financial Supervision Authority shall give immediate notice of its decision to revoke an authorisation for foundation, in Estonia, of a branch of a third country credit institution to the financial supervision authorities of the contracting states where the credit institution's other branches entered in the list provided by Article 14 of Directive 2006/48/EC of the European Parliament and of the Council and published annually in the Official Journal of the European Union are located. Information on the practical consequences of the decision shall be added to such notice.
[RT I 2010, 2, 3 - entry into force 22.01.2010]

(2) Upon implementation of the decision specified in subsection (1) of this section with respect to a branch of a third country credit institution, the Financial Supervision Authority shall cooperate with the financial supervision authorities of the contracting states where the relevant credit institution has branches.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

(3) Liquidators of a branch founded in Estonia by a third country credit institution are required to cooperate with the liquidators of the branches of that credit institution in other contracting states.
[RT I 2004, 86, 582 - entry into force 01.01.2005]

Chapter 12 LIABILITY

[RT I 2004, 86, 582 - entry into force 01.01.2005]

§ 134⁷. Violation of prudential ratios

Violation of the prudential ratio, including the violation of own funds requirement, large risk concentration limit, liquidity requirement and the financial leverage rate or violation of the conditions for credit risk of securitization positions - shall be punished by a fine of up to 32,000 euros.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 134⁸. Failure to submit information

(1) A failure to make public or submit to the Financial Supervision Authority a mandatory report, document, explanation or other data provided for in this Act or Regulation (EU) No 575/2013 of the European Parliament and of the Council in a timely manner, or submission of an inaccurate or misleading information or publication thereof, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 134⁹. Violation of procedure for settlements

(1) Violation of the procedure for settlements by credit institutions provided by legislation is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 134¹⁰. Violation of obligation to maintain confidentiality of information subject to banking secrecy

(1) A head or employee of a credit institution, or any other person acting in the interests of a credit institution, who unlawfully discloses information subject to banking secrecy shall be punished by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 134¹¹. Violation of procedure for acquisition of qualifying holding in bank

(1) Acquisition or transfer of a holding in a bank, or turning a bank into a controlled company without giving prior notice thereof to the Financial Supervision Authority pursuant to this Act or in violation of a precept specified in subsection 31 (3) of this Act, or exercise of voting rights or other rights to grant control in a bank in violation of a precept of the Financial Supervision Authority is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 134¹². Violation of requirements for manager of credit institution

(1) Preparation by a manager of a credit institution of the organisational structure, internal audit system, risk identification, measurement or management, or internal management procedures for submission of reports or preparation of business continuity plan, which is inadequate or in non-compliance with the requirements provided for in this Act or Regulation (EU) No 575/2013 of the European Parliament and of the Council - is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 134¹³. Violation of requirements for activities of foreign credit institution

Provision, by a credit institution of a contracting state, of a financial service specified in clause (6) (1) 1) of this Act in Estonia without informing the Financial Supervision Authority thereof or violation of the requirements of this Act established with regard to the activities of foreign credit institutions is punishable by a fine of up to 32,000 euros.

[RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 134¹⁴. Violation of pre-contractual information obligation upon entry into investment deposit transaction

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

(1) Violation of the obligation provided in subsection 89 ¹(1) of this Act – is punishable by a fine of up to 300 fine units.
[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I, 24.03.2011, 1 - entry into force 01.08.2011]

§ 134¹⁵. Relating provision of financial and investment services to compulsory funded pension

(1) Failure by a manager or an employee of a credit institution, a subsidiary of a credit institution of a foreign state, a financial institution or a subsidiary of a financial institution of a foreign state or by other person acting in the interests of the institution or its subsidiary referred to above to meet the obligations for provision of financial and investment services provided in subsection 14 (5 ¹), subsection 25 (2 ¹) and in the second sentence of subsection 37 (2) of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.
[RT I, 24.03.2011, 1 - entry into force 01.08.2011]

§ 134¹⁶. Proceedings

[Repealed - RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 134¹⁷. Violation of limitations on investments

(1) Violation of limitations on investment of assets arising from this Act – is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, – is punishable by a fine of up to 32,000 euros.
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 134¹⁸. Proceedings

The Financial Supervision Authority is the body conducting extra-judicial proceedings of the misdemeanours provided for in this Chapter.
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 134¹⁹. Violation of obligation to assess solvency of consumer

(1) Violation by the credit institution of the obligation related to assessment of the creditworthiness of the consumer provided for in §§ 49 or 50 – is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, – is punishable by a fine of up to 32,000 euros.
[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

Chapter 13 IMPLEMENTATION OF ACT

§ 141. Application of Act to operating credit institutions

(1) Credit institutions operating on the date of entry into force of this Act shall bring their activities and documents into conformity with the requirements of this Act within one month after the entry into force of this Act, unless otherwise provided for in this section.

(2) The articles of association of credit institutions shall be brought into conformity with the requirements of this Act within nine months after the entry into force of this Act. If the articles of association of a credit institution founded before the entry into force of this Act are in conflict with this Act, the provisions of this Act apply.

(3) Credit institutions founded before the entry into force of this Act are required to bring the membership of their directing bodies into conformity with the requirements of this Act and submit the documents prescribed in subsection 48 (7) of this Act to Eesti Pank within one year after the entry into force of this Act.

(4) A person who has a qualifying holding in a bank but does not hold corresponding authorisation is required to apply from the Financial Supervision Authority an authorisation to acquire a qualifying holding within six months after the entry into force of this Act. From 1 September 1999, votes representing qualifying holdings without corresponding authorisation shall not be included in the quorum of the general meeting.

(5) If a merger agreement between credit institutions was entered into before 1 July 1999, the Act in force at the time of entry into the merger agreement applies to acts performed in connection with the merger.

(6) If liquidation proceedings, bankruptcy proceedings or a moratorium regarding a credit institution commenced before 1 July 1999, the Act in force at the time of adoption of the liquidation resolution, commencement of the bankruptcy proceedings or establishment of the moratorium applies to acts performed in connection with the liquidation proceedings, bankruptcy proceedings or moratorium, unless otherwise prescribed in this section.

(7) The provisions of clause 120 6) of this Act apply to liquidation proceedings commenced before 1 July 1999 and the provisions of subsections 128 (4) and (5) and subsection 130 (2) of this Act apply to bankruptcy proceedings commenced before 1 July 1999.

(7¹) A person who holds an authorisation of a credit institution and a branch of a credit institution of a foreign state, who did not have an identification code specified in subsection 13 (3¹) of this Act before the entry into force of this subsection, may apply for the issue of the identification code and the right to use thereof from the Financial Supervision Authority. The Financial Supervision Authority shall decide on the issue of the identification code and the right to use thereof within 30 calendar days as of the receipt of the corresponding application.

[RT I, 31.12.2016, 1 – entry into force 10.01.2017]

(8) All circumstances and obligations which are not in compliance with this Act and which a credit institution is unable to eliminate or perform during the terms specified in this section shall be set out in a list which, together with a plan for the elimination of such circumstances and for the performance of such obligations, shall be

submitted to Eesti Pank within six months after the entry into force of this Act. Eesti Pank shall specify a term for elimination of such circumstances and deficiencies.

(9) Eesti Pank has the right to establish legislation and give explanations and instructions for the implementation of this Act.

[RT I 2001, 48, 268 - entry into force 01.01.2002]

§ 141¹. Transitional provisions for calculation of capital requirements

(1) Until 31 December 2007, a credit institution may apply the legal provisions in force before 1 January 2007 upon calculation of risk-weighted assets.

(2) The provisions of subsection (1) of this section do not apply to credit institutions who obtained the activity licence after 1 January 2007.

(3) If a credit institution calculates the capital requirements for credit risk pursuant to subsection (1) of this section, the credit institution shall prepare and submit to the Financial Supervision Authority reports in compliance with the legal provisions in force before 1 January 2007.

(4) If a credit institution calculates the capital requirements for credit risk pursuant to subsection (1) of this section, the credit institution may:

- 1) decrease the capital requirement for credit risk in the same proportion as the extent to which the legal provisions in force before 1 January 2007 are applied in calculation of the risk-weighted assets;
- 2) base the calculation of the limitations for concentration of exposures on the legal provisions in force before 1 January 2007.

(5) If a credit institution calculates the capital requirements for credit risk pursuant to subsection (1) of this section, the requirements provided by §§ 631 and 921 of this Act do not apply.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 141². Requirements for own funds

(1) If a credit institution calculates the capital requirements for credit risk pursuant to the basic approach to internal ratings, then during the year 2007, its own funds shall make up at least 95 per cent of the requisite own funds, calculated pursuant to the legal provisions in force before entry into force of this Act.

(2) If a credit institution calculates the capital requirements for credit risk pursuant to an internal ratings approach, its requisite own funds calculated pursuant to the legal provisions in force before 1 January 2007 shall make up:

- 1) during the year 2008, at least 90 per cent of the requisite own funds calculated pursuant to the legal provisions in force before 1 January 2007;
- 2) during the year 2009, 2011 and 2012, at least 80 per cent of the requisite own funds calculated pursuant to the legal provisions in force before 1 January 2007.

[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

(3) If a credit institution calculates the capital requirements for credit risk pursuant to an internal ratings approach, then until 31 December 2012, the weighted average amount of loss related to the retail claims secured by residential property shall not be less than 10 per cent unless the central government has granted a guarantee for such claims.

[RT I, 21.12.2010, 3 - entry into force 01.01.2011]

(4) If a credit institution calculates the capital requirements for credit risk pursuant to an advanced measurement approach, then its own funds shall make up:

- 1) during the year 2008, at least 90 per cent of the requisite own funds calculated pursuant to the legal provisions in force before 1 January 2007;
- 2) during the year 2009, 2011 and 2012, at least 80 per cent of the requisite own funds calculated pursuant to the legal provisions in force before 1 January 2007.

[RT I, 29.03.2012, 1 - entry into force 30.03.2012]

(5) If a credit institution owns instruments that according to the redaction valid until 31 December 2010 belonged to the composition of Tier 1 own funds on the basis of subsection 73 (1) of this Act but are not any more in compliance with the conditions provided in subsection § 731 of this Act that entered into force on 31 December 2010, they shall belong among the instruments specified in clause 73 (1) 7) of this Act until 31 December 2040, taking account of the following restrictions:

- 1) during ten years after 31 December 2010 the position of the instruments cannot exceed 20 per cent of the requisite own funds;
- 2) during ten years after 31 December 2030 the position of the instruments cannot exceed 10 per cent of the requisite own funds.

(6) A credit institution that is not able to meet the limit specified in subsection (5) of this section by 31 December 2010, is required to develop the strategy and plan of action in order to bring its activity into accordance with requirements.

§ 141³. Transactions for managing credit risk

A credit institution that uses the standardised approach or basic internal ratings approach to credit risk for calculation of capital requirements may, in order to decrease capital requirements or lower risk weight, take account of the securing transactions performed before 1 January 2007 upon calculation of the capital requirements if such transactions meet the conditions provided by this Act.
[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 141⁴. Differences in licence terms for use of methods for calculation of capital requirements

(1) If a credit institution applies for permission for the use of the internal ratings approach to credit risk from the Financial Supervision Authority before 31 December 2009, the credit institution must be able to prove that it has used, at least during one year before obtaining permission for the use of the internal ratings approach, a rating system which, in its essence, conforms to the minimum requirements provided by this Act.

(2) If a credit institution applies for permission for the use of the internal ratings advanced measurement approach to credit risk from the Financial Supervision Authority before 31 December 2008, the credit institution must be able to prove that it has assessed and used, at least during two years before obtaining permission for the use of the internal ratings advanced measurement approach, internal ratings concerning loss amounts and revaluation factors which, in their essence, conform to the minimum requirements provided by this Act.

(3) A credit institution may commence the use of the advanced internal ratings approach to credit risk upon calculation of the capital requirements for credit risk, and the advanced measurement approach upon calculation of operational risk as of 1 January 2008.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 141⁵. Administrative procedure upon application for licences

(1) The provisions of the Credit Institutions Act in force until 31 December 2006 apply to administrative proceedings which the Financial Supervision Authority has initiated before 1 January 2007.

(2) The permissions regarding the calculation of prudential norms granted by the Financial Supervision Authority before 1 January 2007 remain in force to the extent in which they are not contrary to this Act and legislation issued on the basis thereof.

[RT I 2006, 63, 467 - entry into force 01.01.2007]

§ 141⁶. [Repealed - RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 141⁷. Alignment of savings and loan associations and association banks with requirements that entered into force on 1 July 2010

The savings and loan associations and association banks that were established before 1 July 2010 are required to align their activities by 1 July 2011 at the latest with the redaction of this Act that entered into force on 1 July 2010. Until the activities and the documents are aligned with the redaction specified, the activities and documents of savings and loan associations and association banks shall be in correspondence with the legislation valid until 1 July 2010.

[RT I 2010, 34, 182 - entry into force 01.07.2010]

§ 141⁸. Alignment of activities and documents of credit institutions with redaction of this Act passed on 23 February 2011

(1) Credit institutions are required to bring their activities and documents in accordance with the requirements of the redaction of this Act passed on 23 February 2011 provided in clause 52 (4) 2¹), §§ 57¹-57⁴, subsection 59 (3), clause 63 (2) 5¹), subsection 89 (6), §§ 89¹ and 92² at the latest by 30 June 2011. Until bringing into accordance with the specified redaction the activity and documents of the credit institutions are required to comply with the legislation valid with regard to the requirements specified above until the specified redaction enters into force.

(2) The terms for submission and disclosure of the annual report and documents provided in subsection 91 (2) and subsection 92 (3) of this Act shall not be applied to documents prepared for the year 2010 of the credit institution. The terms valid before entry into force of the redaction specified in subsection (1) of this section shall apply to submission and disclosure of the annual report and documents prepared for 2010.

[RT I, 24.03.2011, 1 - entry into force 03.04.2011]

§ 141⁹. Alignment of activities and documents of credit institutions with redaction of this Act passed on 16 April 2014

(1) The requirement for the global systemically important credit institution buffer provided for in § 86⁴⁷ of this Act shall be implemented from 1 January 2016. The rate of the abovementioned buffer shall be:

- 1) 25 % of the buffer requirement for global systemically important credit institution for the year 2016 determined pursuant to subsection 86⁴⁷(5) of this Act;
- 2) 50 % of the buffer requirement for global systemically important credit institution for the year 2017 determined pursuant to subsection 86⁴⁷(5) of this Act;
- 3) 75 % of the buffer requirement for global systemically important credit institution for the year 2018 determined pursuant to subsection 86⁴⁷(5) of this Act;

(2) The obligation to disclose the information specified in subsections 92 (8) and (10) of this Act shall not be applied to the documents of the credit institution prepared for the year 2014 unless otherwise provided for in this Act.

(3) Information specified in clauses 92 (8) 1)–3) of this Act shall be disclosed in the annual report prepared for the year 2014. Global systemically important credit institutions are required to submit information specified in clauses 92 (8) 4)–6) of this Act for the year 2014 to the European Commission.

(4) Article 412 (1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council shall be applied from 1 January 2015.

(5) Until 2 January 2029 the positions, specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council Article 493 (3) (a), (b) (c) and (h), and 50% of the medium risk off-balance sheet documentary credits and unused off-balance-sheet credit limits, specified in point (i) of the same subsection, indicated in Annex I to Regulation (EU) No 575/2013 of the European Parliament and of the Council, may be deducted upon calculation of exposures for the purpose of monitoring the thresholds of large exposures.

(6) The extent of the systemic risk buffer rate specified in clause 86⁴⁹(5) 1) of this Act is three per cent until 31 December in the year 2014.

[RT I, 09.05.2014, 2 - entry into force 19.05.2014]

§ 141¹⁰. Alignment of activities of credit institution and documents with redaction of this Act passed on 18 February 2015

Credit institutions are required to align their activities and documents with the requirements of the redaction of this Act passed on 18 February 2015, provided for in subsection 48 (4), § 57¹, clauses 63 (3) 3) and 4⁴⁾ and subsections 63 (4) and (5) and subsection 83 (3¹), by 21 March 2016.

[RT I, 19.03.2015, 4 - entry into force 29.03.2015]

§ 141¹¹. Bringing activities of credit institutions into conformity with redaction of this Act passed on 16 December 2015

Credit institutions are required to bring their activities and documents into compliance with the requirements provided for in subsection 49 (5) and subsection 89 (1²) of the redaction of this Act passed on 16 December 2015 at the latest by 31 May 2016.

[RT I, 31.12.2015, 38 - entry into force 10.01.2016]

§ 142. Entry into force of Act

This Act enters into force on 1 July 1999, except for:

- 1) subsections 87 (3)–(5), 114 (4), 128 (3) and 132 (1), which enter into force on 1 January 2000;
- 2) Chapter 4, which enters into force upon the entry into force of the Savings and Loan Associations Act;
- 3) subsections 21 (4) and 30 (6), which shall enter into force upon accession of the Republic of Estonia to the European Union unless otherwise provided by an international agreement of the Republic of Estonia.

§ 143. Application and repeal of earlier legislation

(1) [Omitted from this text.]

(2) Other legislation regulating the activities of credit institutions upon the entry into force of this Act applies to credit institutions in so far as such legislation is not in conflict with this Act.

¹European Parliament and Council Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC and the European Parliament and Council Directives 98/78/EC and 2000/12/EC (OJ L 035, 11.02.2003, p 1-27), as last amended by Directive 2011/89 / EL (OJ L 326, 08.12.2011, pp. 113-141); European Parliament and Council Directive

2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.06.2013, pp.338-436). [RT I, 09.05.2014, 2 - entry into force 19.05.2014]