

National Securities Commission (CNVM)

Regulation No. 13/2006 on mortgage bonds

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Law No. 32/2006 on mortgage bonds

CHAPTER I

General Provisions

Art. 1. - The purpose of this law is to establish the conditions and the general framework for the issue of mortgage bonds, as well as to regulate the rights and obligations conferred by them to their holders.

Art. 2. - Within the meaning of this law, the terms and expressions below shall have the following meanings:

1. agent – means a legal person or a person devoid of legal personality, appointed and authorised in accordance with the provisions of Chapter IV to represent the interests of the holders of mortgage bonds belonging to the same issue;

2. archive – means the Electronic Archive for Security Interests in Personal Property;

3. competent authority – means the National Bank of Romania and the National Securities Commission, having regulatory, supervisory and control duties with regard to the issuers and issues of mortgage bonds in accordance with the provisions hereof;

4. mortgage loan – means any loan granted in accordance with Law No. 190/1999 on mortgage loans for real estate investments, as subsequently amended;

5. commercial mortgage loan – means a mortgage loan for real estate investments, contracted to fund real estate investments used for any purpose other than housing;

6. eligible mortgage loan – means a mortgage loan that meets the eligibility criteria referred to in Art. 5 in order to be included in the mortgage loan portfolio based on which an issue of mortgage bonds is to be performed;

7. performing mortgage loan – means an eligible mortgage loan, intended for a mortgage bond issue, that meets the performance requirements specified in the issuing prospectus;

8. residential mortgage loan – means a mortgage loan for real estate investments, contracted to fund real estate investments used for housing purposes;

9. ancillary rights – means all real or personal rights related to the mortgage receivable, including real security rights and receivable rights arising from the insurance policies concluded by the loan beneficiary;

10. issuer – means the Romanian legal person bank or mortgage loan bank that granted or took over by assignment mortgage loans and that issued or intends to issue mortgage bonds;

11. investor – means any person holding mortgage bonds on its own account;

12. qualified investor – means the entity having the capacity to evaluate the risk and yield characteristics of mortgage bonds, defined in accordance with Art. 2(1) Point 15 of Capital Market Law No. 297/2004, as subsequently amended and supplemented;

13. mortgage bonds – means securities in dematerialised form, issued based on a prospectus approved by the National Securities Commission and under its supervision, in order to refinance the issuer's activity to grant mortgage loans, based on a mortgage loan portfolio over which the

investors acquire a first rank guarantee and a preference right with regard to any creditor of the issuer;

14. affiliated person – means any natural or legal person which, in accordance with Art. 2(1) Point 23 of Law No. 297/2004, as subsequently amended and supplemented, is presumed to act in concert with another natural or legal person;

15. mortgage bonds public offering – means the communication addressed to certain persons, made in any form and through any means, presenting sufficient information on the terms of the offer and on the mortgage bonds offered so as to allow the investor to take a decision on the sale, purchase or subscription of such mortgage bonds. This definition shall also apply to the investment of mortgage bonds through financial intermediaries;

16. offer addressed to qualified investors – means the sale in full of an issue of mortgage bonds to qualified investors, in compliance with the provisions of Law No. 297/2004, as subsequently amended and supplemented, as well as of the implementation rules hereof;

17. mortgage loan portfolio or portfolio – means all of the receivables and ancillary rights with which the issuer guarantees the fulfilment of the obligations assumed by a given mortgage bonds issue;

18. issuing prospectus or prospectus – means the mortgage bond public sale offering, prepared in compliance with the provisions of this law, of Law No. 297/2004, as subsequently amended and supplemented, as well as with the rules issued for the implementation thereof;

19. nominal value – means the principal amount of the loan or, in the case of the guarantees, the maximum amount for which they were established;

20. value of the mortgage loan – means the amount remaining to be repaid from the nominal value of a loan;

21. value of the portfolio – means the amount of the values of the mortgage loans in the portfolio;

22. reference value – means the value established by an authorised evaluator, according to law.

Art. 3. - (1) The expression “mortgage bonds” shall be used only to refer to securities issued under this law.

(2) The securities that do not meet the requirements provided under Art. 2 Point 13 shall not benefit from the legal regime provided hereby and cannot be referred to as “mortgage bonds”.

Regulation

1.1. The terms and expressions used in this regulation shall have the meanings provided in Art. 2 of Law No. 190/1999 on mortgage loans for real estate investments, as subsequently amended and supplemented, as well as in Art. 2(1) of Law No. 297/2004 on the capital market, as subsequently amended and supplemented, hereinafter referred to as Law No. 297/2004.

1.2. The issue of mortgage bonds shall take place in accordance with the general provisions of Law No. 297/2004 and of the regulations issued by the National Securities Commission for the implementation thereof, as well as with the special provisions of Law No. 32/2006 on mortgage bonds, hereinafter referred to as Law No. 32/2006, and of this regulation.

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CHAPTER II Portfolio Structuring

Art. 4. - (1) In order to be used to guarantee an issue of mortgage bonds, mortgage loans shall be grouped into portfolios, provided that, throughout the issuing period, the following principles are cumulatively observed:

a) each mortgage loan in the portfolio was granted in accordance with the legal provisions in force at such date;

b) the mortgage loans were granted to make a real estate investment in Romania or in the Member States of the European Union or of the European Economic Area;

c) the portfolio is standardized so as to include a single type of mortgage loans as regards the scope of the real estate investment;

d) the weighted average of the maturity of the mortgage loans in the portfolio to be used for the issue is higher than the maturity of the mortgage bonds to be issued based on them; the weighted average of the maturities shall be calculated as weighted average of the outstanding term of the loans in the related portfolio, weighted by the nominal value of the loan upon the initiation of the issue;

e) the updated value of the receivables used to guarantee a mortgage bond issue is at least equal to the updated value of the payment obligations of the issuer before the holders of mortgage bonds from the issue guaranteed by said portfolio;

f) the total value of the mortgage loans guaranteed by mortgages on lands without constructions and of those guaranteed by mortgages on properties under construction does not exceed 20% of the portfolio value;

g) the general eligibility criteria provided by law and the performance requirements provided by the issuing prospectus are met.

(2) The issuing prospectus must include information on the observance of each of the principles referred to in Para (1).

Art. 5. - (1) The general eligibility criteria of mortgage loans to guarantee a mortgage bond issue are as follows:

a) the nominal value of a mortgage loan does not exceed 80% of the reference value of the property brought as guarantee, in the case of a residential mortgage loan, and 70% of the reference value of the property brought as guarantee, in the case of a commercial mortgage loan;

b) the amount of the mortgage loan was made available to the beneficiary in full;

c) the value of the mortgage loans granted to a single beneficiary, by itself or by aggregation with the value of the mortgage loans granted to persons affiliated therewith, does not exceed 10% of the portfolio value;

d) the receivable rights conferred by the mortgage loan are not subject to a real security;

e) the loan does not record any payment delays upon the inclusion in the portfolio and subsequently, in order to be maintained in the mortgage loan portfolio, it should not record delays of more than 61 days from the service debt;

f) the property brought as guarantee was insured against risks for an amount equal to the reference value of the property established upon the conclusion of the mortgage contract;

g) the real rights established to secure the repayment of the loan are first rank rights.

(2) The issuers may establish, by internal rules, additional eligibility criteria which shall be made public by the issuing prospectus.

Regulation

2.1. The additional eligibility criteria established by the issuer in accordance with the provisions of Art. 5 (2) of Law No. 32/2006 shall be approved by the National Securities Commission together with the issuing prospectus and form an integral part thereof.

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Art. 6. - If, during an issue, some of the mortgage loans in the portfolio no longer meet the eligibility criteria, become non-performing, within the meaning of this law, or cause the decrease of the weighted average of the maturities of the mortgage loans in the portfolio, of the sum of their

value or of the sum of the related interest rates below the limit provided by law, the portfolio shall be supplemented accordingly with eligible mortgage loans and, in accordance with Art. 7, with new assets, in compliance with the principles, conditions and formalities provided by law and by the issuing prospectus for the establishment thereof.

Art. 7. - (1) The issuer may supplement the portfolio and replace the mortgage loans that are in the situation referred to in Art. 6 by assets having a risk degree not exceeding that of the mortgage loans in the portfolio, provided that all of the following conditions are met:

- a) such a possibility was expressly provided in the issuing prospectus;
- b) the issuer does not have mortgage loans that may be included in the portfolio, in compliance with the provisions of Art. 4(1);
- c) said assets are not subject to a real security.

(2) The categories of assets eligible for the supplementation of the portfolio and replacement of mortgage loans in the portfolio, and the conditions and percentages in which each category of assets may replace mortgage loans in a portfolio shall be established by rules of the National Bank of Romania.

(3) The maximum general limit permitted for the supplementation of the portfolio and replacement of the loans in a portfolio and the substitution of the mortgage loans in the portfolio by assets cannot exceed 20% of the portfolio value.

Regulation

3.1. During the performance of an issue, any amendment of the initial conditions, in accordance with the provisions of Arts. 6 and 7 of Law No. 32/2006 shall be notified by the issuer to the National Securities Commission based on the certificate on the regularity of its fulfilment of the legal requirements and of those of the issuing prospectus with regard to the structure of the mortgage loan portfolio, issued by the agent in compliance with Art. 15(3) of Law No. 32/2006, which shall be attached to the issuing prospectus and shall be made public.

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Art. 8. - The provisions of Art. 167 of Company Law No. 31/1990, republished, as subsequently amended and supplemented, shall not apply to the mortgage bonds issued hereunder.

Art. 9. - The amounts resulting from the mortgage bond issue shall not be subject to the provisions of Government Ordinance No. 39/1996 on the establishment and operation of the Bank Deposit Guarantee Fund, republished, as subsequently amended and supplemented.

CHAPTER III Internal Registry

Art. 10. - (1) The issuers must keep, for each mortgage bond issue, an internal registry reflecting the structure and dynamics of the portfolio. The internal registry shall contain, on a mandatory basis, the following information with regard to each mortgage loan in the portfolio:

1. the identification data of the mortgage loan contract, specifying its category depending on the scope of the real estate investment;
2. the beneficiary's identification data;
3. the identification data of the property over which the guarantee for the repayment of the mortgage loan was established, specifying the land registry number;
4. the nominal value, the mortgage loan value and the reference value of the property referred to in Point 3, calculated upon the conclusion of the mortgage contract;

5. any other guarantee established for the repayment of the loan, specifying the nominal value thereof.

(2) The internal registry shall include a section intended for records regarding the assets included in the portfolio in accordance with the provisions of Art. 7.

(3) The internal registry shall be supplemented by the issuer upon each amendment or supplementation of the data in the initial records. The issuer shall provide the agent, on a monthly basis, with a copy of the Internal Registry, signed by its legal representative, as well as a written report regarding the structure of the portfolio, the sum of the pecuniary obligations of the issuer before the holder of mortgage bonds from such issue, the value of the mortgage loans and of the assets included in the portfolio in accordance with the provisions of Arts. 6 and 7, the value of the mortgage loans provided under Art. 6, regardless of whether or not they were eliminated from the portfolio, the value of the ancillary rights used by the issuer as guarantee, and the synthetic documentation based on which such values were calculated.

(4) The internal registry of the issuer shall be subject to the control of the National Bank of Romania.

(5) The National Bank of Romania may prepare rules on the contents, keeping and filling in of the internal registry.

CHAPTER IV

The Agent

Art. 11. - (1) In order to proceed to a mortgage bond issue, the issuer must appoint an agent authorised to verify the correct keeping of the Internal Registry by the issuer, to register with the archive the security interests in personal property over the portfolio and any subsequent amendments with regard thereto and to represent the holders of mortgage bonds.

(2) The agent appointed by the issuer shall not be a person affiliated to it or the issuer's financial auditor.

Art. 12. - (1) The agent shall be chosen by the issuer from among the agents authorised by the National Bank of Romania and the National Securities Commission and appointed through the issuing prospectus.

(2) The mandate of the agent shall be confirmed by the investors by their subscription of the mortgage bond issue and shall be terminated upon the full payment of the obligations assumed by the issuer to the holders of mortgage bonds from such issue.

(3) In accordance with the provisions of Paras (1) and (2), the issuer may also appoint a substitute agent.

Art. 13. - (1) The agency services shall be provided by:

- a) legal person financial auditors, registered with the Registry of Financial Auditors;
- b) credit institutions;
- c) investment firms for which the agency activity is a related service, in accordance with this law;
- d) individual practices, associated law offices or professional law firms, in accordance with the provisions of Law No. 51/1995 for the organisation and exercise of the legal profession, republished, as subsequently amended and supplemented;
- e) notary public offices organised in accordance with Law No. 36/1995 on Notaries public and notarial activity, as subsequently amended and supplemented.

(2) In order to authorise an applicant as agent, the National Bank of Romania and the National Securities Commission shall evaluate it in terms of competence, capacity, experience, reputation and integrity required to safely provide agency services to investors, they shall examine the circumstances and information available on its activity and decide, by common order, on the authorisation, if it complies with the requirements provided hereunder and in the regulations for the implementation hereof.

(3) The legal person or the organisation devoid of legal personality authorised as agent shall appoint a natural person as permanent representative to fulfil the mandate of agent. This person shall be personally liable for the obligations arising from the agency services, without eliminating or reducing the liability of the legal person or of the organisation devoid of legal personality such person represents, and must meet all of the following conditions:

- a)** legal or economic studies;
- b)** at least 5 years of professional experience in his field of activity;
- c)** good reputation;
- d)** not convicted or indicted for fraudulent management, abuse of trust, forgery and trafficking therein, fraud, embezzlement, false statements, bribery or other crimes provided by the special law for the organisation of profession;
- e)** not sanctioned, in the past 3 years, by the authority regulating the activity carried out.

Art. 14. - (1) The agent's obligations and liability before the holders of mortgage bonds are regulated by the provisions regarding the mandate, unless otherwise provided by this law.

(2) The agent may not delegate the fulfilment of its specific duties and may not transfer the right to represent the holders of mortgage bonds, except by early termination of the mandate.

(3) The contract concluded between the issuer and the agent shall be attached to the issuing prospectus.

Art. 15. - (1) The agent shall have the following main duties:

a) to verify the compliance by the issuer with the legal requirements and with the requirements of the issuing prospectus with regard to the mortgage loan portfolios upon the confirmation of its mandate and, on a monthly basis, throughout thereof;

b) to conclude, in its own name, but on behalf of the investors, within the said mortgage bond issue, a guarantee contract over the mortgage loans and assets included in the portfolio in accordance with Art. 7, in the form attached to the prospectus, and to register in the archive, in the name of the agent, but on behalf of the issue, the related guarantee notice;

c) to register in the archive, in its own name, but on behalf of the investors, within said mortgage bond issue, all amendments and supplementations made to the guarantee referred to in Letter b), so as the archive accurately reflects the Internal Registry;

d) to notify in writing the issuer, the National Bank of Romania and the National Securities Commission if it finds that the issuer breaches any of its obligations before the investors, in accordance herewith and with the prospectus, if such breach is not remedied within 10 days from the date it was found;

e) to call the general meeting of holders of mortgage bonds, if it finds that the issuer breached its obligations to them in accordance with this law and the issuing prospectus, if such breach is not remedied within 30 days from the date it was found;

f) to inform the National Bank of Romania and the National Securities Commission on calling the general meeting of holders of mortgage bonds for the reason provided under Letter e);

g) to fulfil the publicity requirements with regard to the resolutions issued by the general meeting of holders of mortgage bonds in the Official Journal of Romania, Part IV, and in a national newspaper and to enforce them;

h) to represent the holders of mortgage bonds before the issuer, the public authorities and any third person, within the limits laid down by the general meeting thereof, to exercise, in its own name, but on behalf of the investors, their rights arising from their holding of mortgage bonds, except for the voting right.

(2) The verification and control duties provided herein shall be fulfilled only based on the synthetic documentation prepared by the issuer on its own liability. Upon request, the issuer must provide the agent with clarifications and written statements or primary documents in order to determine the extent to which it complies with the obligations incumbent upon it before the holders of mortgage bonds from such issue.

(3) After verifying the synthetic documentation referred to in Para (2), the agent shall issue a certificate on the regularity of its fulfilment of the legal requirements and of those of the issue prospectus with regard to the structure of the mortgage loan portfolio. The certificate shall accompany, on a mandatory basis, the issuing prospectus.

Art. 16. - (1) The agent shall exercise its duties with the same care and diligence as if it were managing its own interests.

(2) With regard to the fulfilment of its duties provided herein, the provisions of Arts. 49 through 53 of Law No. 58/1998 on the banking activity, republished, or, as the case may be, of Title VII of Law No. 297/2004, as subsequently amended and supplemented, shall apply accordingly to the agent.

(3) The agent shall be liable, jointly with the issuer and, as the case may be, with the investment firm that intermediated the sale and/or with the financial auditor of the issuer, before the holders of mortgage bonds they represent for the prejudices caused as a result of their inappropriate fulfilment of their duties referred to in Letters a) through c) of Art. 15(1).

(4) The agent shall be solely liable for the improper fulfilment of all of the other duties incumbent upon it in accordance with law or the issuing prospectus. Also, the agent shall be liable for all prejudices caused directly to the issuer and/or the holders of mortgage bonds as a result of:

a) its unjustified refusal to enforce a resolution of the general meeting of the holders of mortgage bonds;

b) its waiver of the mandate, other than for non-compliance with the requirements to exercise the duties as agent in accordance with this law;

c) its failure to notify the issuer and the holders of mortgage bonds on the occurrence of a cause of non-compliance with the requirements to exercise its specific duties by the agent or by its permanent representative;

d) its failure to call the general meeting of the holders of mortgage bonds in order to appoint a new agent, where applicable, to collaborate with the substitute agent or with the newly appointed agent in order to hand over the mandate or to ensure the agency services until the commencement of the activity of the substitute agent or of the newly appointed agent.

Regulation

4.1. The issuer must notify the National Securities Commission and the market operator whether the mortgage bonds are admitted to trading on a regulated market and to publish in a national newspaper the certificate on the regularity of its fulfilment of the legal requirements and of those of the issuing prospectus with regard to the structuring of the mortgage loan portfolio, issued by the agent in accordance with the provisions of Art. 15(3) of Law No. 32/2006.

4.2. Upon the publication of the prospectus, to which the certificate on the regularity of its fulfilment of the legal requirements and of those of the issuing prospectus with regard to the structuring of the mortgage loan portfolio, issued by the agent in accordance with the provisions of Art. 15 (3) of Law No. 32/2006 is attached, the publicity obligations referred to in Point 4.1 shall not apply.

4.3. For the issuer to meet the obligation referred to in Point 4.1, the agent must provide to the issuer, on a monthly basis, the certificate on the regularity of its fulfilment of the legal requirements and of those of the issuing prospectus with regard to the structuring of the mortgage loan portfolio, issued in accordance with the provisions of Art. 15(3) of Law No. 32/2006, which shall also include the requirements referred to in Point 4.5.

4.4. In accordance with the provisions of Law No. 32/2006, the agent shall ensure the observance of the rights of the holders of mortgage bonds from the same issue, by verifying how the issuer fulfils its obligations in accordance with the legal provisions and with those of the issuing prospectus.

4.5. In order to fulfil its duties, in accordance with the legal provisions, the agent shall perform at least the following operations:

a) to certify the composition of the mortgage loan portfolio intended to be used to guarantee the fulfilment of the issuer's obligations to the holders of mortgage bonds, in compliance with the selection and eligibility criteria established in accordance with Art. 4(1) and Art. 5 of Law No. 32/2006;

b) to certify the isolation of the mortgage loan portfolio from the other assets of the issuer;

c) to certify the correlation between the value of the mortgage receivables included in the portfolio and the value of the mortgage bonds issued;

d) to certify that the issuer has used risk management techniques to prevent the risk of unbalance between the value of the mortgage receivables included in the portfolio and the value of the mortgage bonds, in accordance with the provisions of Letter e) of Art. 4(1) of Law No. 32/2006;

e) to confirm the use of evaluation and periodic re-examination methods of the receivables included in the portfolio;

f) to confirm that the value of the mortgage loan portfolio was established in accordance with the legal provisions;

g) to attest that the issuer uses the periodical re-evaluation procedures of the guarantees;

h) to monitor the interest rate risk and the risk generated by the potential occurrence of unbalances between the interest rate risk related to the assets included in the portfolio and the interest rate risk of the bonds;

i) to certify the compliance with the legal provisions with regard to the substitution/supplementation operations of the mortgage loans included in the portfolio with other mortgage loans or eligible assets;

j) to certify that the mortgage bonds issuer keeps the Internal Registry in accordance with legal provisions;

k) to certify the consistency between the contents of the Internal Registry and the monthly reports submitted by the issuer to the agent with regard to the portfolio structure;

l) to certify the observance of the provisions of the issuing prospectus.

4.6. The agent's activity shall also be subject to the provisions of NSC – NBR regulation on the authorisation of agents based on Law No. 32/2006 on mortgage bonds.

Law No. 32/2006

CHAPTER V

Mortgage bond issue

Art. 17. - (1) Mortgage bonds may be offered for subscription by public offering, based on a prospectus approved by the National Securities Commission.

(2) The mortgage bond public offering shall be made in compliance with the provisions of this law, of Law No. 297/2004, as subsequently amended and supplemented, and of the rules issued for their implementation.

Art. 18. - (1) In order to assess the success of a mortgage bond public offering, the request of the investment intention shall be permitted, provided that a preliminary prospectus was communicated, approved in accordance with the regulations of the National Securities Commission.

(2) The preliminary prospectus and the response to the request of the investment intention expressed thereby shall not produce legal effects between the parties.

(3) After the National Securities Commission approves the preliminary prospectus, the issuer may contact potential investors and may provide them with information on its activity and the issue it intends to launch.

Art. 19. - The mortgage bond public sale offering shall be made by an authorised intermediary, in accordance with the provisions of Law No. 297/2004, as subsequently amended and supplemented.

Art. 20. - (1) The minimum contents of the issuing prospectus shall include, in addition to the information provided by the capital market legislation, the following categories of information:

a) data regarding the issuer and its activity, including the financial statements for the last financial year or the last accounting reports, in the form laid down by the National Bank of Romania and approved by the Ministry of Public Finance, in accordance with Art. 62 of Law No. 58/1998, republished;

b) the characteristics of the bond issue loan, namely: the total value of the issue and the number of mortgage bonds issued, the nominal value and the issue price, the sale price, the intermediation commissions paid to the investment firms, the estimated value of the issue costs, the duration of the public offering, the regulated market/alternative system on which the mortgage bonds are to be traded, the maturity, the interest rate, the calculation method of the interest rate and payment intervals, the repayment schedule of the mortgage bonds, the repurchase option, the payment modality of the subscribed mortgage bonds and allocation modality of the mortgage bonds in case of oversubscription; in the case of mortgage bond issues that do not confer equal rights to their holders, the information regarding them shall be presented separately for each class of mortgage bonds of such issue;

c) the characteristics of the mortgage loan portfolio related to the issue, including the value of the loans in the portfolio, and the reference value of the guarantees established for the repayment of the mortgage loans upon the conclusion of the guarantee contract, by reference to the nominal value of the issue and the coverage of the interest payment obligation, the geographical distribution of the mortgage loans, their maturity, interest rate, interest rate calculation method and payment intervals, the early repayment conditions;

d) possibility to resize the portfolio accordingly in case of subscription and the preservation or, as the case may be, the change of its characteristics;

e) data on the financial auditor;

f) data on the agent, including the related commission.

(2) The information included in the issuing prospectus shall be certified by the financial auditor of the issuer.

(3) The contents of the prospectus, its form and the documents that shall accompany it in order to be authorised are provided in the specific capital market legislation.

Art. 21. - The results of the offer shall be submitted to the National Securities Commission and to the market institutions, if applicable, in accordance with the regulations of the National Securities Commission.

Art. 22. - The issuers may acquire the mortgage bonds from their own issue, without having a voting right at the meetings of the holders of mortgage bonds based on the bonds thus acquired.

Regulation

5.1. The mortgage bond public offering shall be conducted in accordance with the provisions of Law No. 297/2004 and of the regulations issued by the National Securities Commission for the implementation thereof, as well as in accordance with the provisions of Law No. 32/2006 and of this regulation.

5.2. The application for approval of the offer prospectus or, as the case may be, of the preliminary prospectus prepared in order to assess the success of a mortgage bond public offering shall be submitted to the National Securities Commission in accordance with the provisions of Law No. 297/2004, and of Regulation No. 1/2006 on the issuers of and operations with securities, approved by Order No. 23/2006 of the National Securities Commission, hereinafter referred to as Regulation No. 1/2006.

5.3. In order to approve the offer prospectus, the National Securities Commission is entitled to request any information it deems necessary in order to protect the investors, including, but not limited to, opinions issued by financial auditors, active members of the Chamber of Financial

Auditors of Romania, with regard to the financial balance of the operation, and on the evaluation of the portfolio of receivables.

5.4. In addition to the documents provided by Regulation No. 1/2006, the offer prospectus shall be accompanied by copies of the following documents:

- a)** the contract concluded between the issuer and the agent, or the substitute agent;
- b)** the guarantee provided in Letter b) of Art. 15(1) of Law No. 32/2006;
- c)** the certificate on the regularity of its fulfilment of the legal requirements and of those of the issuing prospectus with regard to the structuring of the mortgage loan portfolio, referred to in Art. 15(3) of Law No. 32/2006, which shall also include the requirements referred to in Point 4.5, if they may be achieved upon the date of publication of the prospectus;
- d)** the proof of registration in the archive of the security interest in personal property over the portfolio related to the issue, in accordance with the provisions of Art. 23(4) of Law No. 32/2006.

5.5. The offer prospectus shall include, in addition to the information provided by Regulation No. 1/2006 and Law No. 32/2006, information with regard to:

- a)** meeting each of the legal eligibility criteria with regard to the mortgage receivables included in the portfolio;
- b)** additional eligibility criteria, if they were established by the issuer in accordance with Art. 5(2) of Law No. 32/2006, as well as information with regard to their observance;
- c)** any person offering collaterals or credit lines;
- d)** the ratio between the value of the portfolio and the reference value of the guarantees established for the repayment of the mortgage loans upon the conclusion of the guarantee contract and the value of the issuer's obligations to the holders of mortgage bonds issued in consideration of the relevant portfolio;
- e)** the general characteristics of each mortgage debtor as well as statistical data regarding the mortgage loan market;
- f)** any relationship between the issuer, guarantor and the beneficiaries of the mortgaged receivables, that is relevant for the issue, if any;
- g)** the evaluation modality and its results (the evaluation report), the evaluation method used for the mortgage loans in the portfolio, establishing both the value of the properties forming the object of the mortgage loans and the cash flows generated by them (this requirement shall not apply if a re-evaluation was performed for the purpose of the issue and where it is expressly mentioned that the evaluations referred to are those performed upon the granting of said mortgage loans);
- h)** the rights reserved by the issuer to alienate the receivables included in the portfolio or to encumber them with additional charges;
- i)** the insurance policies of the mortgage receivables in the portfolio, for which any concentration of the policies with regard to a single insurer must be mentioned;
- j)** the existence of additional guarantees, the over-guarantee percentage, the reason to establish additional guarantees;
- k)** the structure of the operation and the cash flows involved, namely:
 - 1.** the description of the operation structure, including an explanatory diagram;
 - 2.** the nomination of the entities participating in the issue and their functions;
 - 3.** the presentation of the verification modality of the equivalence between the cash flows generated by the receivables in the portfolio and the sum of the pecuniary obligations of the issuer to the holders of mortgage bonds;
 - 4.** the guarantees used;
 - 5.** the priority order of the payments to be made to the holders of mortgage bonds of different classes;
 - 6.** details on the existence of any clauses and conditions on which the payment of the interest/principal to the holders of mortgage bonds depends;
 - 7.** the assignor of the loans, if part of the mortgage loans in the portfolio were previously acquired by the issuer.

5.6. The prospectus shall also mention data regarding the substitute agent that shall perform the agency services in the case of revocation or withdrawal of the authorisation of the current agent, including data on its commission to be paid as of the commencement of its mandate.

Law No. 32/2006

CHAPTER VI

Rights of the holders of mortgage bonds

Art. 23. - (1) Each mortgage bond issue shall be guaranteed with the mortgage loan portfolio described in the Internal Registry. Based on the established guarantee, the holders of mortgage bonds shall acquire the right to satisfy their receivables against the issuer, by capitalising the portfolio with priority by reference to any other creditor, regardless of the nature of its receivable or the real guarantee or legal or conventional privilege established in its favour over the portfolio or any component thereof, unless the real guarantee right or privilege was registered in the archive prior to the registration of the rights of the bond holders.

(2) The registration in the Internal Registry of a mortgage loan or of an asset included in the portfolio, in accordance with the provisions of Art. 7, shall cause the registration and treatment thereof separately in the issuer's accounting records, in accordance with the legal provisions in force.

(3) The assignment of the receivables related to the mortgage loans or of the assets registered in the Internal Registry, as well as the establishment of charges or guarantees over them in favour of third parties, with regard to the mortgage bond issue they guarantee shall be sanctioned by absolute nullity unless such right was expressly reserved by the issuing prospectus and the publicity of the guarantee was performed in accordance with the provisions of Para (4).

(4) The security interest in personal property over the portfolio related to the issue shall be established and registered in the archive in the name of the agent appointed by the issuer and on the account of the issue prior to the prospectus' launch date. The Security interest in personal property contract as an instrument shall be concluded by the agent and the issuer in accordance with the provisions of Letter b) of Art. 15(1), which shall adjust accordingly the object thereof, in the case referred to in Letter d) of Art. 20(1) and, subsequently, throughout the guarantee period, also performing the appropriate registrations with the archive to reflect the dynamics of the portfolio.

(5) The registration in the archive of the security interest in personal property over the mortgage receivable in the portfolio shall be made using special forms to describe the mortgage related thereto by mentioning the main identification data of the property they encumber: the locality where the property is located, the land registry number, the number of the property block, the cadastral number and the parcel number, as the case may be, and any other real guarantees established in order to guarantee said mortgage receivable. The program of the archive database shall be amended so as to be able to determine and issue a certificate, on request, specifying whether the mortgage right over a property was established as guarantee together with the receivable it guarantees, as well as the current beneficiary of such right.

(6) The establishment as guarantee of the mortgage right over a property, together with the receivable it guarantees, is not subject to the publicity formalities with the property's land registry. The mortgage established over a property to guarantee the repayment of a mortgage loan may be deregistered only based on a certificate issued by an authorised operator, authorised to certify that the establishment as guarantee, in favour of a third party, of the mortgage right over said property was not registered in the archive database.

(7) The establishment as guarantee of the receivables and ancillary rights, related to each mortgage loan in the portfolio, in favour of the holders of mortgage bonds shall be notified by the

issuer or by the agent to the mortgage loan beneficiary, as assigned debtor, no later than 7 days from the establishment of the guarantee over the portfolio.

Art. 24. - (1) The holders of mortgage bonds of the same issue may meet in a general meeting to deliberate on their interests, whenever required to decide on:

a) the revocation and appointment of a new agent, provided that it is validated by the competent authorities;

b) the declaration of the mortgage bond issue as payable in advance if the agent finds, and the National Securities Commission certifies, at the agent's request, that the issuer breached its obligations to the holders of mortgage bonds, unless it is remedied within the term referred to in Letter e) of Art. 15(1);

c) the transfer of the portfolio for management from the issuer to a third person authorised according to law, when the issuer is in the situation referred to in Letter b) or if the bankruptcy proceedings were initiated against it;

d) other matters required to protect the investors in the issuer's mortgage bonds.

(2) During the general meeting, the holders of mortgage bonds may not be represented by the shareholders, directors, censors or employees of the issuer. The agent may not vote, based on the mortgage bonds it holds or as attorney-in-fact of other holders of mortgage bonds, on the issue referred to in Letter a) of Para (1).

(3) The general meeting of the holders of mortgage bonds shall be presided over by the agent, assisted by one to three secretaries, elected from among the attending holders of mortgage bonds, who shall verify the attendance list of the holders, indicating the representation share by each of them in the issue value.

(4) The vote of the holders of mortgage bonds may also be cast by correspondence.

Art. 25. - The general meeting of the holders of mortgage bonds shall be called at the issuer's expense, at the request of a number of holders of mortgage bonds representing at least 25% of the total number of mortgage bonds of such issue or at the request of the agent.

Art. 26. - (1) In order to validate the deliberations of the general meeting of the holders of mortgage bonds, a number of holders representing at least 25% of the total number of mortgage bonds of such issue must be present, and the decisions must be taken by holders representing 50% of the total number of holders of mortgage bonds of such issue, present at the general meeting.

(2) If the general meeting of the holders of mortgage bonds cannot work due to the failure to meet the conditions referred to in Para (1), the general meeting that reconvenes after a second call may decide on the items of the first meeting's agenda, regardless of the percentage of the total number of mortgage bonds represented by the attending holders of bonds, by a majority of votes.

(3) In order to adopt resolutions on declaring the mortgage bond issue as due in advance or the transfer of the portfolio management right from the issuer to a third party in accordance with the provisions of Letter b) of Art. 24(1), the affirmative vote of holders of mortgage bonds representing 25% of the total number of mortgage bonds of such issue is required, regardless of the percentage represented by the holders that voted against.

Art. 27. - The resolutions of the general meeting of the holders of mortgage bonds shall be communicated to the issuer within maximum two days of their adoption.

Art. 28. - The provisions of Law No. 31/1990, republished, as subsequently amended and supplemented, with regard to the form, conditions, call terms, submission of titles, representation and vote, the binding nature of the resolutions of the general meeting of the holders of mortgage bonds and the appeals to which they are subject shall apply accordingly to the organisation and decision-making process of the general meeting of the holders of mortgage bonds.

CHAPTER VII

Special provisions regarding the dissolution and liquidation of the issuer

Art. 29. - Throughout the term of the bond loan contracted in accordance with this law, the general meeting of the issuer's shareholders cannot decide on the dissolution thereof if prior to taking such decision the issuer did not transfer the portfolio and the obligations assumed towards the holders of mortgage bonds guaranteed with such portfolio to another authorised issuer, in accordance with the provisions of Art. 26(3) and subject to the prior approval of the National Bank of Romania.

CHAPTER VIII

Special provisions regarding the bankruptcy of issuers

Art. 30. - If bankruptcy proceedings are brought against the issuer, its implementation bodies shall ensure the effective exercise in full of the rights of the holders of mortgage bonds over the portfolio related to the issue, in accordance with this law.

Art. 31. - **(1)** Until all obligations incumbent upon the issuer before the holders of mortgage bonds, based on this law and on the prospectus, are fulfilled, the mortgage loan portfolios related to the mortgage bond issues shall not be realised by sale during the issuer's assets liquidation procedure. The sale-purchase contracts concluded in breach of these provisions shall be affected by absolute nullity.

(2) By derogation from the provisions of Para (1), one or more of the mortgage loan portfolios may be included in a transaction having as its object the purchase of assets and assumption of liabilities by a third party, provided that the following requirements are met:

a) the latest monthly report referred to in Letter p) of Art. 5 of Government Ordinance No. 10/2004 on the bankruptcy of credit institutions, approved as amended and supplemented by Law No. 278/2004, approved by the syndic judge, provides the sources and payment commitment, in full, in advance and independently of the sale of the relevant portfolio, of all of the issuer's obligations to all holders of mortgage bonds of the issuer, recalculated to date;

b) the general meeting of the holders of mortgage bonds of each issue approved the realisation in advance of the receivable rights against the issuer, in the conditions specified by the liquidator's report, as applicable, with the number of votes provided in Art. 26(3).

Art. 32. - The receivables of the holders of mortgage bonds entitle them to participate in the debates, without having a voting right, during the general meeting of the issuer's creditors. In this respect, as well as in the relationship with the liquidator, the holders of mortgage bonds are represented by the agent, which shall exercise its mandate in accordance with the decisions of the general meeting of the holders of mortgage bonds.

Art. 33. - **(1)** Whenever the conditions of Art. 31(2) are not met, the holders of mortgage bonds have the right to receive the amounts to which they are entitled, in the amount and on the time limits provided in the prospectus. The provisions of Art. 18 of Government Ordinance No. 10/2004, approved as amended and supplemented by Law No. 278/2004, shall not apply to the interest that, in accordance with the schedule of the issuing prospectus, become due after the initiation of the bankruptcy proceedings.

(2) For the purposes of Para (1), the management of the portfolio shall continue throughout the bankruptcy proceedings and independently of it, until the realisation of all receivables related to the mortgage loans in said portfolio. For the management of the portfolio, one or several special use accounts shall be opened, different from those referred to in Letter a) of Art. 5 of Government Ordinance No. 10/2004, approved as amended and supplemented by Law No. 278/2004.

(3) After the initiation of the bankruptcy proceedings, the management of the portfolio may be performed, with the approval of the general meeting of the holders of mortgage bonds, by a portfolio management company competent according to the law on the securitisation of receivables

to manage receivable portfolios. The management of the portfolio includes the monitoring of the fulfilment of the obligations of the assigned debtors, the restructuring of the receivables, the collection of the payments made by the beneficiaries of the mortgage loans in the portfolio, including by forced execution in the name and on behalf of the issuer, and the payment of the amounts owed by the issuer to the holders of mortgage bonds in accordance with the terms and conditions established by the issuing prospectus, after the payment of the agency and portfolio management services.

(4) The receivable portfolio management company has the right to be repaid all expenses incurred with taking in custody and managing said portfolios, in accordance with the resolution of the general meeting of the holders of mortgage bonds, and has priority in the distribution of the amounts resulting from the realisation of the receivables related to said portfolio, by reference to the holders of mortgage bonds.

Art. 34. - If the collection pace of the amounts owed by the beneficiaries of the mortgage loans in the portfolio allows for the satisfaction in advance of part of the issuer's obligations to the holders of mortgage bonds of the issue guaranteed with it, they must accept the payments in advance, with the appropriate recalculation of their rights.

Art. 35. - (1) Any amounts generated by the mortgage loan portfolio, related to an issue, after the full payment of the rights of the holders of mortgage bonds of such issue, shall be deposited by the portfolio management company in a special account, opened in the name of the liquidator, and shall be distributed as follows:

a) to the holders of mortgage bonds of other issues, proportionally, if their receivables were not satisfied in full by the realisation of the rights arising from the portfolios related to such issues;

b) the creditors whose receivables were not covered in full upon the temporary closing of the bankruptcy proceedings, in the order provided by Government Ordinance No. 10/2004, approved as amended and supplemented by Law No. 278/2004.

(2) The distribution of the amounts referred to in Para (1) shall be made by the liquidator only after it finds that the management activity of all mortgage loan portfolios used to guarantee the issuer's mortgage bonds was fulfilled, by the report subject to the approval of the syndic judge.

(3) If the bankruptcy proceedings are completed prior to fulfilling the management activity of all mortgage loan portfolios used to guarantee the issuer's mortgage bonds, the liquidator shall prepare a temporary closing report, based on which the court shall issue a temporary closing decision, expressly indicating the holders and the amount of the uncovered receivables.

(4) For the holders of the receivables indicated in the temporary closing decision of the bankruptcy proceedings, the legal limitation period within which they may request the amounts to which they are entitled according to Letter b) of Para (1) shall be interrupted until they are notified of the existence of amounts remaining undistributed after the covering of the receivables referred to in Letter a) of Para (1).

CHAPTER IX

Special provisions on the forced execution

Art. 36. - (1) The forced execution of a portfolio may be initiated only by the holders of mortgage bonds of the issue guaranteed with said portfolio, in accordance with Letter b) of Art. 24(1).

(2) The forced execution in accordance with the provisions of Para (1) may be initiated against the receivable portfolio in full, as universality.

(3) The amounts resulting from the forced execution shall be distributed according to the following order of preference:

a) the receivables representing expenses of any nature incurred with the forced execution and the management of the portfolio subject to execution;

b) the receivables resulting from holding the mortgage bonds of the issue guaranteed with the portfolio subject to execution;

c) other categories of creditors, in the order established by law.

CHAPTER X

Petty offenses and sanctions

Art. 37. - (1) The following deeds are deemed petty offenses:

a) the breach of the provisions of Art. (1), if the expression “mortgage bonds” was used in the issuing prospectus or in any information material, in writing or by audio-visual communication, to the prospective investors with regard to the characteristics of securities issued or pending issuance;

b) the breach of the conditions provided in the authorisation in the case of any activities and operations for which this law requires an authorisation;

c) failure to observe, by the issuer, of the conditions on the portfolio structuring referred to in Art. 4(1), Art. 5(1) and Art. 7;

d) the incorrect keeping by the issuers of the Internal Registry.

(2) The deeds provided under Para (1) shall be sanctioned by:

a) fine ranging between RON 10,000 and RON 50,000;

b) the following additional sanctions:

1. withdrawal of the authorisation;

2. temporary or final prohibition for natural or legal persons to occupy certain positions or carry out certain activities and services provided hereby.

(3) The sanctions referred to in Para (2) Letter b) Points 1 and 2 shall only apply subject to taking the necessary measures to protect the holders of mortgage bonds.

(4) The perpetration of the deeds referred to in Para (1) Letters a) and b) shall be established and sanctioned by the competent bodies and in compliance with the procedural provisions provided in Law No. 297/2004, as subsequently amended and supplemented.

(5) The perpetration of the deed referred to in Para (1) Letters b) to d) shall be established and sanctioned by the persons authorised in this respect by the National Bank of Romania, in accordance with the provisions of Law No. 58/1998, republished.

(6) The National Bank of Romania and the National Securities Commission may issue common rules on finding and sanctioning the deeds provided under Para (1), in accordance with the provisions of Paras (2) to (5).

(7) The provisions related to petty offenses and the related sanctions shall be supplemented by the provisions of Government Ordinance No. 2/2001 on the legal regime of petty offenses, approved, as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, as long as they do not conflict with the provisions of this chapter.

(8) By exception from the provisions of Para (7), the procedure for establishing and acknowledging petty offenses, as well as for the application of sanctions by the National Securities Commission, derogates from the provisions of Government Ordinance No. 2/2001 on the legal regime of petty offenses, approved, as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented.

CHAPTER XI

Final provisions

Art. 38. - The National Bank of Romania and the National Securities Commission shall issue common rules and the regulations referred to herein, within 3 months of the date of entry into force hereof.

Art. 39. - This law shall enter into force 30 days after its publication in the Official Journal of Romania, Part I.