

Act No. 22/1992 Coll. of Laws on the State Bank of Czechoslovakia
Act No. 21/1992 Coll. of Laws on Banks

The Act ratified by the Federal Assembly of the Czech and Slovak Federal Republic on December 20th, 1991

Translation SBCS

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ACT

dated December 20th 1991 on the State Bank of Czechoslovakia

The Federal Assembly of the Czech and Slovak Federal Republic has resolved on the following Act:

PART ONE

BASIC PROVISIONS

Article 1

(1) The State Bank of Czechoslovakia is the central bank of the Czech and Slovak Federal Republic.

(2) The State Bank of Czechoslovakia is a juridical person having its seat in Prague; it shall not be entered into the Corporate Register.

(3) The State Bank of Czechoslovakia shall act as a Federal central authority to the extent defined in this Act and by separate acts.

(4) The State Bank of Czechoslovakia shall have the position of an entrepreneur in respect to dealing with its own property under the legal regulations concerning proprietary relations.

Article 2

The primary objective of the State Bank of Czechoslovakia is to ensure stability of the Czechoslovak national currency. For this purpose, the State Bank of Czechoslovakia shall:

- a) set monetary policy;
- b) issue banknotes and coins;
- c) control the circulation of currency, coordinate the payments and settlement of accounts between banks, and ensure their smooth and efficient operation;

d) perform supervision over the execution of banking operations and take care of the prudential and purposeful development of the banking system in the Czech and Slovak Federal Republic;

e) perform other activities pursuant to this Act.

Article 3

(1) The State Bank of Czechoslovakia shall be obliged to submit to the Federal Assembly of the Czech and Slovak Federal Republic a report on monetary development at least two times a year; at the same time, it shall inform the Czech National Council and the Slovak National Council of the same.

(2) The State Bank of Czechoslovakia shall be obliged to inform the general public on monetary development at least once every three months.

PART TWO

ORGANIZATION OF THE STATE BANK OF CZECHOSLOVAKIA

General Problems

Article 4

The State Bank of Czechoslovakia shall be composed of:

- a) its Federal Headquarters having its seat in Prague;
- b) its Headquarters for the Czech Republic having its seat in Prague, and its Headquarters for the Slovak Republic having its seat in Bratislava;
- c) branch offices;
- d) special-purpose organizational units.

Bank Board

Article 5

(1) The supreme managing body of the State Bank of Czechoslovakia shall be the Bank Board of the State Bank of Czechoslovakia (hereinafter "the Bank Board"). The Bank Board shall set monetary policy and the instruments for the implementation of these policies, and shall decide on the measures to be taken in the sphere of monetary policy.

(2) Furthermore, the Bank Board shall in particular:

- a) set forth the principles for the activities and transactions of the State Bank of Czechoslovakia, as well as the competencies of the Federal Headquarters, the Headquarters for the Czech Republic and the Headquarters for the Slovak Republic in respect to the execution of such transactions and activities, unless set forth in this Act;
- b) approve of the budget of the State Bank of Czechoslovakia (Article 15);
- c) set forth the organizational arrangement and competencies of the organizational units of the State Bank of Czechoslovakia;
- d) define the types of funds of the State Bank of Czechoslovakia. as well as their respective amounts and uses;
- e) stipulate the level of credits as per Article 35. para. 2;
- f) specify the salary and possible other remuneration for the Governor;
- g) grant consent for the involvement of the employees of the State Bank of Czechoslovakia in managerial, supervisory and inspection bodies of commercial companies and banks.

Article 6

- (1) Members of the Bank Board shall be the Governor of the State Bank of Czechoslovakia, two Vice-Governors of the State Bank of Czechoslovakia of whom one shall be a citizen of the Czech Republic and the other a citizen of the Slovak Republic, and the Vice-Governor in charge of managing the Headquarters of the State Bank of Czechoslovakia for the Czech Republic and his deputy. and the Vice-Governor in charge of managing the Headquarters for the Slovak Republic and his deputy.
- (2) The Governor shall be appointed for the term in office specified in the Act, and recalled, by the President of the Czech and Slovak Federal Republic upon a proposal of the Government of the Czech and Slovak Federal Republic.
- (3) Vice-Governors of the State Bank of Czechoslovakia shall be appointed and recalled by the President of the Czech and Slovak Federal Republic upon a proposal of the Governor as discussed with the Government of the Czech and Slovak Federal Republic.
- (4) The Vice-Governor in charge of managing the Headquarters of the State Bank of Czechoslovakia for the Czech Republic and his deputy, and the Vice-Governor in charge of managing the Headquarters of the State Bank of Czechoslovakia for the Slovak Republic and his deputy shall be appointed and recalled by the President of the Czech and Slovak Federal Republic upon a proposal of the Governor after consulting with the Government of the respective Republic.
- (5) The senior officers listed in paragraph 1 above shall be appointed for a term of six years.

(6) Membership in the Bank Board shall be incompatible with the post of a Member of Parliament, any position in the Governments of the Czech and Slovak Federal Republic and the Republic Governments, and any position in managerial, supervisory and inspection bodies of other banks and commercial companies.

(7) A senior officer who is on the Bank Board under this Act may be recalled only in the event he has been lawfully sentenced for a criminal act or if, according to a decision taken by the Bank Board, he has lost the ability to perform his function, or upon his own request submitted to the Bank Board. Such a senior officer shall also be recalled if he has assumed a position specified in para. 6 above.

Article 7

(1) Deliberations of the Bank Board shall be chaired by the Governor; in his absence, the chair shall be held by the Vice-Governor appointed by the Governor. The Bank Board shall adopt decisions by a simple majority of votes. The Bank Board shall have a quorum if the Governor, or the presiding Vice-Governor appointed by the Governor, and at least three other members of the Bank Board are present. In the event of a tied vote the vote of the presiding person shall be decisive.

(2) In the deliberations and voting of the Bank Board, a member of the Bank Board may be represented by another member of the Bank Board, on the basis of a letter of proxy in writing.

(3) The Rules of Procedure of the Bank Board shall be issued by the Governor.

Article 8

The State Bank of Czechoslovakia shall be represented vis-a-vis third parties by the Governor.

Federal Headquarters of the State Bank of Czechoslovakia

Article 9

(1) The Federal Headquarters of the State Bank of Czechoslovakia shall arrange for the Bank Board meetings and, within the limits of its competencies, shall carry out the decisions adopted by the Bank Board.

(2) The Federal Headquarters of the State Bank of Czechoslovakia shall be responsible in particular for:

a) transactions with the Czech and Slovak Federal Republic pursuant to this Act (Articles 35 and 36);

b) management of monetary reserves in gold and foreign exchange, transactions with foreign exchange values and the performance of cross-border payments;

- c) issuing securities of the State Bank of Czechoslovakia and transactions therewith;
- d) operations with securities;
- e) methodical management of banking supervision and, within the limits set by the Bank Board, performance of such management;
- f) control of special-purpose organizational units attached to the Federal Headquarters of the State Bank of Czechoslovakia.

Article 10

The Federal Headquarters of the State Bank of Czechoslovakia shall be controlled by the Governor. At the time of his absence the Governor shall be represented by the Vice-Governor appointed by the Governor. The advisory body of the Governor shall be the Federal Headquarters Board of Directors, the members of which shall be appointed and recalled by the Governor.

The Headquarters of the State Bank of Czechoslovakia for the Czech Republic and the Headquarters of the State Bank of Czechoslovakia for the Slovak Republic Article 11 (I) Within the limits of their competencies the Headquarters of the State Bank of Czechoslovakia for the Czech Republic and the Headquarters of the State Bank of Czechoslovakia for the Slovak Republic (hereinafter only "Republic Headquarters") shall take part in the arrangements for Bank Board meetings and shall provide for the execution of the decisions adopted by such meetings. (2) Republic Headquarters shall be responsible in particular for: a) transactions with the respective Republics pursuant to this Act (Articles 35 and 36); b) transactions with banks based in the territory of the respective Republic pursuant to this Act; c) performance of banking supervision to the extent stipulated by the Bank Board; d) supervision of the fulfilment of obligations in the management of foreign exchange values by persons other than banks based in the territory of the respective Republic, the said supervision being performed by the State Bank of Czechoslovakia pursuant to a separate act. (3) Republic Headquarters shall control branch offices and specialpurpose organizational units of the State Bank of Czechoslovakia in the territory of the respective Republic, with the exception of special-purpose organizational units attached to the Federal Headquarters of the State Bank of Czechoslovakia. Article 12 Republic Headquarters shall be controlled by the Vice-Governors in charge of controlling the respective Republic Headquarters, or by a proxy at the time of absence of this Vice-Governor. The advisory body of a Vice-Governor shall be the Republic Headquarters Board of Directors, the members of which shall be appointed and recalled by the Vice-Governor in charge of controlling the respective Republic Headquarters. Advisory Teams Article 13 Advisory teams composed of experts who are not employees of the State Bank of Czechoslovakia may be established by the Federal Headquarters and Republic Headquarters of the State Bank of Czechoslovakia. The formation of advisory teams attached to the Federal Headquarters shall be decided, and its members appointed by the Governor. The formation of the advisory teams attached to a Republic Headquarters shall be decided, and its members

appointed. by the Vice-Governor in charge of controlling the respective Republic Headquarters. Deliberations of the advisory teams attached to the Federal Headquarters shall be chaired by the Governor or a Vice-Governor appointed by the Governor, while the deliberations of the advisory teams attached to a Republic Headquarters shall be chaired by the Vice-Governor in charge of controlling the respective Republic Headquarters or his deputy.

PART THREE RELATIONS TO GOVERNMENTS

Article 14 (1) In providing for its primary objective (Article 2) the State Bank of Czechoslovakia shall be independent of any instructions given by the Government of the Czech and Slovak Federal Republic and the Governments of the Czech Republic and the Slovak Republic. (2) Deliberations of the Bank Board may be attended in an advisory capacity by a member of the Government of the Czech and Slovak Federal Republic, a member of the Government of the Czech Republic and a member of the Government of the Slovak Republic appointed by the respective Government.

Article 15 (1) The State Bank of Czechoslovakia shall take a position on proposals presented for consideration to the Governments of the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic, which concern the competencies of the State Bank of Czechoslovakia. (2) The State Bank of Czechoslovakia shall act in an advisory capacity vis-a-vis the Governments of the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic in respect to matters of monetary policy and banking.

Article 16 The Governor of the State Bank of Czechoslovakia shall be entitled to attend meetings of the Government of the Czech and Slovak Federal Republic, while the Vice-Governor in charge of the respective Republic Headquarters shall be entitled to attend the meetings of the Government of the respective Republic.

PART FOUR ISSUE OF BANKNOTES AND COINS

Article 17 The State Bank of Czechoslovakia shall have the exclusive right to issue banknotes and coins, as well as commemorative coins (hereinafter banknotes and coins").

Article 18 The monetary unit in the Czech and Slovak Federal Republic shall be the Czechoslovak Crown, abbreviated as "CSK", and divided into one hundred hellers.

Article 19 The State Bank of Czechoslovakia shall manage reserves of banknotes and coins, and shall organize supplies of banknotes and coins from the manufacturers thereof, in accordance with the requirements for the circulation of money.

Article 20 The State Bank of Czechoslovakia shall negotiate the printing of banknotes and the minting of coins, and shall see to the protection and safety of the banknotes and coins that have not been released into circulation, as well as to the safe deposit and destruction of the printing plates, dies as well as invalid and withdrawn banknotes and coins.

Article 21 (1) Valid banknotes and coins issued by the State Bank of Czechoslovakia shall be legal tender at their face value in respect to all payments made in the territory of the Czech and Slovak Federal Republic. (2) Coins of precious metals commemorative coins and special coins intended for the purposes of collection, may be sold at prices other than their face value. (1) The State Bank of Czechoslovakia shall replace upon request damaged banknotes and coins it has issued by undamaged banknotes and coins. (2) The State Bank of Czechoslovakia may refuse to replace such banknotes or coins whose pattern or relief is illegible or punched as well as remains of banknotes smaller than one quarter of the original square area of the banknote. Such banknotes and coins shall be taken from the presenter without any compensation, and destroyed. As an exception, in justified cases, the State Bank of Czechoslovakia may provide compensation. (3) The State Bank of Czechoslovakia shall not provide any compensation for the banknotes or

coins that have been destroyed or lost. It may accept without compensation such banknotes the appearance of which has been changed particularly those that have been written on, drawn on printed on, printed over or perforated or over which paint, glue or a similar material has been smudged. Article 23 Banknotes and coins suffering from wear-and-tear due to circulation shall be withdrawn from circulation by the State Bank of Czechoslovakia destroyed and replaced by new banknotes and coins. Article 24 (1) The State Bank of Czechoslovakia may declare invalid, and withdraw from circulation the banknotes and coins it has issued. It shall compensate their face value by way of substituting other, newly issued banknotes and coins for them. The period over which the process of this replacement may take place shall not be less than five years. (2) At the end of the replacement period the aggregate sum of the banknotes and coins that have been declared invalid but have not been presented for replacement, shall be deducted from the amount of money in circulation that appears in the accounts of the State Bank of Czechoslovakia. This sum shall be revenue to the State Bank of Czechoslovakia. Article 25 Any kind of reproduction of banknotes, coins, bank cheques, securities or credit cards valued in the Czechoslovak crown or in a foreign currency (hereinafter money symbols"), or objects that imitate their appearance, may only be made under the terms and conditions set forth in the relevant procedural edict. Article 26 Counterfeit banknotes and coins valued in Czechoslovak crowns or in a foreign currency shall be taken by juridical persons against receipt without compensation, and shall be handed over to the State Bank of Czechoslovakia. Juridical persons shall demand of the person who has presented counterfeit banknotes or coins that this person prove his or her identity in a credible manner. Authorities for criminal proceedings shall be notified of acceptance of counterfeit banknotes and coins by the juridical person that has accepted the counterfeit money. Article 27 The State Bank of Czechoslovakia shall set forth in a legal regulation: a) the face values, dimensions, weight, material, appearance and other attributes of banknotes and coins and the release of them into circulation; b) the steps to be taken by both natural and juridical persons when accepting and dealing with legal tender, including the steps to be taken upon identifying the banknotes or coins as counterfeit or changed, or when such suspicion arises; c) the manner of compensating for incomplete and damaged banknotes and coins; d) the manner of terminating the validity of banknotes and coins and the manner and period of their replacement by other banknotes and coins. e) the terms and conditions under which reproductions of money symbols or objects that imitate their appearance can be produced.

PART FIVE INSTRUMENTS OF MONETARY REGULATION OF THE STATE BANK OF CZECHOSLOVAKIA

(1) The State Bank of Czechoslovakia shall set forth interest rates, structures, terms of payment and other conditions of the transactions it performs under this Act. (2) The State Bank of Czechoslovakia may set the minimum rates of interest on the deposits accepted by banks and branch offices of foreign banks (hereinafter 'banks'), and the maximum rates of interest on the credits provided by banks. These rates shall be declared in a regulation published in the Collection of Laws. (3) The State Bank of Czechoslovakia may stipulate the maximum volume of credit to be provided by banks. The State Bank of Czechoslovakia shall specify and announce under a separate act the rules pertaining to liquidity and capital base of banks and other prudential principles of the operation of banks. Article 30 (1) The State Bank of Czechoslovakia may demand that banks deposit in an account kept by the State Bank of Czechoslovakia a predetermined

ined part of their funds (hereinafter "minimum reserves requirement"), which will normally bear no interest. (2) The minimum reserves requirement may account for a maximum of 30 per cent of a bank's total liabilities reduced by its liabilities towards other banks, with the exception of the cases listed in para. 3 below. (3) In order to place constraints on excessive liquidity and overcome inflationary pressures the State Bank of Czechoslovakia shall have the right to demand that the minimum reserves requirement be greater than as defined in para. 2 above; in such a case, the amount that is in excess of the level defined in para. 2 above shall bear interest at the effective discount rate.

Article 31 (1) In the event of a bank failing to maintain the specified minimum reserves requirement the State Bank of Czechoslovakia shall be entitled to charge interest on the sum for which the minimum reserves requirement is in default, at a rate of up to three times the effective discount rate. (2) When increasing the level of the minimum reserves requirement the State Bank of Czechoslovakia shall set the deadline by which a bank shall have to achieve this level.

PART SIX TRANSACTIONS OF THE STATE BANK OF CZECHOSLOVAKIA

Transactions with Banks

Article 32 The State Bank of Czechoslovakia shall keep the accounts of banks and accept their deposits. Article 33 The State Bank of Czechoslovakia may purchase from banks and possibly sell to them:

- a) bills of exchange maturing within six months from the day of their purchase by the State Bank of Czechoslovakia and bearing at least two signatures of which at least one shall be attached on behalf of the bank;
- b) Government bonds or other securities underwritten by a Government maturing within one year from the day of purchase by the State Bank of Czechoslovakia.

Article 34 (1) The State Bank of Czechoslovakia may grant to banks for a maximum of three months, credits guaranteed by securities specified in Article 33 above, and, or government bonds or other securities underwritten by a government, maturing at a later date than specified in Article 33, letter b), or guaranteed by stock lists of bulk goods fully insured against loss and damage, or by other collateral. (2) In order to preserve a bank's liquidity the State Bank of Czechoslovakia may, as an exception, provide short-term credit for a period of up to three months.

Business Operations with the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic

Article 35 (1) The State Bank of Czechoslovakia shall keep the revenue and expenditure accounts of the Federal state budget, state budgets of the Republics, state funds and state financial assets and liabilities unless the respective Ministry of Finance negotiates the keeping of such accounts with another bank. Payments from expenditure accounts shall be made up to the aggregate balance in the revenue accounts, which may not be overdrawn. (2) On the basis of a decision taken by the Bank Board the State Bank of Czechoslovakia may grant to the Czech and Slovak Federal Republic the Czech Republic and the Slovak Republic short-term credit by way of purchasing state treasury bills maturing within three months from the day of purchase, to cover fluctuations in the management of the state budgets in a current year. The total amount of such credits may not exceed five per cent of the revenue of the respective budget of the previous year.

Article 36 The State Bank of Czechoslovakia offers for sale, under a separate act, state bonds and in agreement with the Federal Ministry of Finance, the Ministry of Finance of the Czech Republic and the Ministry of Finance of the Slovak Republic, may perform on their behalf and for agreed remuneration, activities related with the management, repayment and transfers of state bonds, payment of interest on these bonds, and, or other activities as required.

16 17 Other Business

Operations of the State Bank of Czechoslovakia Article 37 In order to regulate the money market the State Bank of Czechoslovakia may buy and sell negotiable securities. Article 38 The State Bank of Czechoslovakia may issue short-term securities maturing within six months and trade in them. Article 39 (1) The State Bank of Czechoslovakia may keep accounts of its employees and provide other banking services to them. As an exception, it may, also do so for juridical persons. (2) A separate Act¹) applies analogously to the performance of the activities listed in para. 1 above.

PART SEVEN JURISDICTION OF THE STATE BANK OF CZECHOSLOVAKIA IN RESPECT TO FOREIGN EXCHANGE MANAGEMENT Article 40 The State Bank of Czechoslovakia shall: a) proclaim the exchange rate of the Czechoslovak currency vis-à-vis foreign currencies; b) determine the price of gold in the banking operations of the State Bank of Czechoslovakia; c) have in custody and manage monetary reserves in gold and foreign exchange, and dispose of the same. Article 41 The State Bank of Czechoslovakia shall: a) trade in gold and other foreign exchange values and engage in all types of banking transactions with domestic and foreign banks; b) determine the conditions for regulating the balance of payments of the Czech and Slovak Federal Republic and promulgate them in regulations² in the Collection of Laws; c) determine the conditions for trade in gold and other foreign exchange values as performed by banks and other persons under a separate act³, and declare them in a regulation in the Collection of Laws³; d) issue securities in foreign currencies.

PART EIGHT OTHER ACTIVITIES AND POWERS OF THE STATE BANK OF CZECHOSLOVAKIA Article 42 (1) The State Bank of Czechoslovakia shall submit to the Government of the Czech and Slovak Federal Republic draft legislation on currency and circulation of money. (2) The State Bank of Czechoslovakia together with the Federal Ministry of Finance shall submit to the Government of the Czech and Slovak Federal Republic draft legislation on foreign currency management and banking issues. Article 43 The State Bank of Czechoslovakia shall control circulation of cash. For this purpose it may set forth in legal regulations the cases in which cash payments shall not be allowed. In order to ensure uniform payments and settlement of accounts in the Czech and Slovak Federal Republic the State Bank of Czechoslovakia shall set forth in legal regulations: a) the principles of the payments system among banks and clearing of the accounts of the banks; b) the manner of using payment instruments used by banks in the payments system.

18 Article 44 The State Bank of Czechoslovakia shall register representative offices of foreign banks and financial institutions (hereinafter 'representative offices') active in the territory of the Czech and Slovak Federal Republic. A foreign bank or financial institution shall be obliged to register its representative office prior to starting its activities. Article 45 Within the limits of its competencies under this Act the State Bank of Czechoslovakia shall negotiate payment and other agreements with foreign banks and international financial institutions. Article 46 (1) The State Bank of Czechoslovakia shall coordinate the development of a banking information system in the Czech and Slovak Federal Republic. For this purpose it shall specify the principles of such a banking information system in legal prescriptions. (2) The State Bank of Czechoslovakia shall be entitled to demand from banks⁴ and other persons to whom it has granted licences under a separate act⁵ such information and materials as it may require. For this purpose and in accordance with a separate Act⁶ it shall set forth in the Collection of Laws⁷ the methodology and conditions for presenting the information and

materials required. defining in particular the contents, form, lay out, deadlines and the manner of transmitting the information and materials required. In the event the information and materials presented do not comply with the required methodology or conditions, or if well-grounded doubts arise concerning the correctness or completeness of such information or materials. the State Bank of Czechoslovakia shall be entitled to request more detailed specification or explanation thereof. If a bank or other person licensed under a separate Act fails to submit the information or materials required, or such information or material is repeatedly incorrect or incomplete, the procedure taken in respect to banks shall be pursuant to a separate Act', while the procedure taken in respect to other persons shall be pursuant to Article 50 of this Act. Article 47 The State Bank of Czechoslovakia shall be entitled to engage in commercial and investment activities as may be necessary to provide for its own operations. PART NINE BANKING SUPERVISION Article 48 (1) The State Bank of Czechoslovakia shall perform banking supervision over: a) activities of banks and over the prudential operation of the banking system; b) activities of persons other than banks, licensed under separate acts7). (2) Banking supervision shall include: a) assessment of applications for a banking licence under a separate Act,4) b) supervision over adherence to the conditions set forth in the licences under letter a) above as well as those granted under a separate Act7); c) supervision over adherence to legal regulations and measures decreed by the State Bank of Czechoslovakia as well as over observance of acts whenever authorized to by this Act and separate Acts1); d) imposition of remedies and sanctions when defects under this Act or under separate acts are detected. Article 49 In the performance of banking supervision by way of inspection on-site, the relations between the State Bank of Czechoslovakia and the supervised persons shall follow the basic rules of inspection as set forth in a separate ActX) for the State Administration authorities of the Czech and Slovak Federal Republic, with the exception of the provisions on the certification of the professional competence of the staff in charge of performing the inspection~, provisions on the publication of the results of inspection'('), and provisions on cooperation in the area of inspection"). Article 50 (1) In the event the State Bank of Czechoslovakia detects shortcomings in the performance of persons other than banks. these persons having been licensed under separate acts7), it may impose on such persons: a) measures oriented towards rectification of the shortcomings detected; it shall, in particular, order the person to abandon the incorrect procedure or terminate operations; ~; 21 b) a fine up to CSK 1,000.000 depending on the gravity of the short coming. (2) The shortcomings mentioned in para. 1 above are understood to consist of a breach of the conditions set forth in the licence granted under separate Acts7), as well as breach of this Act, a separate Act'-', legal regulations and measures decreed by the State Bank of Czechoslovakia. (3) A fine as per paragraph 1, letter b) above shall be imposed by the State Bank of Czechoslovakia also on persons who operate unlicensed where a licence is required under separate Acts '. (4) Imposition of a fine shall not prejudice responsibilities under different legal regulations. (5) Regulations on the Rules of Administration' ~ shall be applicable to the procedure of imposing a fine as per para. 1, letter b) above. An appeal against a ruling to impose a fine shall be decided by the Bank Board. (6) The fines imposed shall constitute revenue of the state budget of the Republic in the territory in which the respective person has his legal seat or residence. (7) The State Bank of Czechoslovakia may impose a fine as per para. 1, letter b) above within one year from the day on which shortcomings were

identified, however, no later than ten years from the day on which these shortcomings came into being.

PART TEN FINANCIAL MANAGEMENT OF THE STATE BANK OF CZECHOSLOVAKIA

Article 51 (1) The State Bank of Czechoslovakia shall manage its finances in accordance with its budget as approved of by the Bank Board. (2) The State Bank of Czechoslovakia shall defray the costs of its operations from its revenues. The profit it generates shall be used to replenish the General Reserves and other Funds created from profits, as well as for other purposes as provided for in the budget. It shall transfer the remaining profit to the state budget of the Federation. (3) Within three months after the end of a calendar year, the State Bank of Czechoslovakia shall submit its Annual Profit and Loss Statement to the Federal Assembly of the Czech and Slovak Federal Republic for approval. In the event the Federal Assembly does not approve of this Statement, the State Bank of Czechoslovakia shall be obliged to present a more accurate and detailed Statement within six weeks to comply with the requirements of the Federal Assembly.

Article 52 (1) The State Bank of Czechoslovakia shall keep accounts in accordance with special regulations." (2) The Annual Financial Statement of the State Bank of Czechoslovakia shall be verified by auditors. (3) The State Bank of Czechoslovakia shall publish an Annual Report containing the basic data on monetary development. (4) The State Bank of Czechoslovakia shall produce and provide every ten days for the general public, a report on its financial standing.

PART ELEVEN GENERAL PROVISIONS

Article 53 All banking operations of the State Bank of Czechoslovakia, including balances on the accounts it keeps, shall be deemed confidential.

Article 54 (1) Employees of the State Bank of Czechoslovakia shall be obliged to maintain confidentiality in the performance of their duty. This obligation shall remain in effect even after the termination of employment or any similar relation to the State Bank of Czechoslovakia. Members of the Bank Board, employees of the Federal Headquarters and those of the special-purpose organizational units attached to the Federal Headquarters of the State Bank of Czechoslovakia may be exempted from this obligation by the Governor on the grounds of public interest. Employees of the Republic Headquarters branch offices and other special-purpose organizational units of the State Bank of Czechoslovakia may be exempted from this obligation by the Vice-Governor of the respective Republic Headquarters on the grounds of the public interest. (2) The obligation of confidentiality in matters they encounter in the performance of their duties shall also be applicable to the members of the Advisory Teams. 22 23 (3) Employees of the State Bank of Czechoslovakia may be involved in managerial, supervisory or inspection bodies of commercial companies and banks only upon approval of the Bank Board (Article 5, para. 2, letter g)).

PART TWELVE TRANSITIONAL AND FINAL PROVISIONS

Article 55 (1) Banknotes and coins being in circulation as legal tender pursuant to special regulations as of the day this Act comes into effect⁴) shall be deemed legal tender under Article 21 of this Act. (2) The possibility to replace invalid banknotes as stipulated in separate regulations" shall not be prejudiced by this Act.

Article 56 (1) Act No. 563/1990 on Budgetary Rules of the Federation shall be applicable to the State Bank of Czechoslovakia with the exception of Article 8, para. 3, Article 11, para. 3, and Articles 15, 16 and 18. Act No. 156/1989 on Revenues to the State Budget shall be applicable to the State Bank of Czechoslovakia, with the exception of Articles 7, 8, 10, 15, 19, 21 and 25. (2) Issuance of securities as per Article 38 and Article 41, para. d) of this Act shall not be subject to permission of the Federal Ministry

of Finance. Article 57 The following are abrogated: (1) Act No. 130/1989 of the Collection of Laws on the State Bank of Czechoslovakia. (2) Article 24, para. 1 of Act No. 156/1989 of the Collection of Laws on Revenues to the State Budget. (3) Articles 2, 3 and 9 of Act No. 41/1953 of the Collection of Laws on Monetary Reform, in the wording of the legal rule adopted by the Presidium of the National Assembly Act No. 25/1961 of the Collection of Laws amending Act No. 41/1953 of the Collection of Laws on Act No. 175/1988 of the Collection of Laws amending Act No. 144/1970 of the Collection of Laws on the State Bank of Czechoslovakia and Act No. 130/1989 of the Collection of Laws on the State Bank of Czechoslovakia. 24 (4) Government Decree No. 35/1954 of the Collection of Laws on Commemorative Coins in the wording of Act No. 130/1989 of the Collection of Laws on the State Bank of Czechoslovakia. (S) Decree No. 302/1991 of the Collection of Laws on the Principles of Remuneration for Financial Services. Article 58 This Act shall enter into force on 1 February 1992. ') For example, Act No. 21/1991 of the Collection of Laws on Banks and (Act No. 10528/1990) of the Collection of Laws on Foreign Exchange in the wording of subsequent prescriptions. -) Act No. 528/1990 on Foreign Exchange of the Collection of Laws in the wording of subsequent prescriptions. l) Article 8 of Act No. 131/1989 of the Collection of Laws on the Collection of Laws.) Act No. 21/1992 of the Collection of Laws on Banks. ') Article 19, para. 2 of Act No. 530/1990 of the Collection of Laws on Bonds. ") Act No. 563/1991 of the Collection of Laws on Accounting.) Foreign Exchange Act, Act on Trade and Entrepreneurial Activities (Trade Rules) No. 455/1991 of the Collection of Laws. ~) Act No. 405/1991 of the Collection of Laws, on Inspection in the Czech and Slovak Federal Republic, Part Two. ") Article 3, paras. 3 and 4 of Act No. 405/1991 of the Collection of Laws. "") Article 19 of Act No. 405/1991 of the Collection of Laws. ") Articles 22 to 26 in Act No. 405/1991 of the Collection of Laws. '-) Act No. 528/1990 of the Collection of Laws on Foreign Exchange in the wording of subsequent prescriptions. '~) Act No. 71/1967 of the Collection of Laws on Administrative Proceedings (Administrative Rules) in the wording of subsequent prescriptions. '~ Decrees on the issuance and withdrawal of banknotes~ coins and commemorative silver coins published in the Collection of Laws from 1 June 1953 to the day of entry into force of the present Act. ") Decree of the Federal Ministry of Finance No. 8/1988 of the Collection of Laws on the Withdrawal of Ten-Crown Banknotes, Model 1960. Decree of the State Bank of Czechoslovakia No. 412/1990 of the Collection of Laws on the Withdrawal of Hundred-Crown Banknotes, Model 1989. Decree of the State Bank of Czechoslovakia No. 413/1990 of the Collection of Laws on the Withdrawal of Fifty-Crown Banknote~, Model 1964 and Twenty-Crown Banknotes, Model 1970 and Additional Exchange of Ten-Crown Banknotes, Model 196().

25 BACKGROUND TO THE ACT ON THE STATE BANK OF CZECHOSLOVAKIA

1. General

Act No. 130/1989 Coll. of Laws on the State Bank of Czechoslovakia relieved the State Bank from many of the banking transactions and services that are traditionally provided to households and organizations by commercial banks and savings banks. Since January 1st, 1990 the State Bank of Czechoslovakia has acted as a traditional central bank. Act No. 130/1989 Coll. of Laws was originally drafted and discussed in light of the prevailing economic thinking of 1988 and 1939, the so-called "comprehensive restructuring of the economic mechanism", and therefore was based in the envisioned improvement of the existing system of national economic management. However, as

early as the first half of 1990 Act No. 130/1989 Coll. of Laws proved to be inadequate. It was originally proposed that the Act be partially amended however this suggestion was rejected by the management of the State Bank of Czechoslovakia in August 1990 and the directive given for the drafting of a new act modelled on central bank legislation in advanced countries. Contributing to the decision to draft a new act rather than a partial amendment was the issue of Federal and Republic competencies being addressed at this time. Further support for this decision came from the IMF Mission of September 1990 in its recommendations. The drafts of the Act on the State Bank of Czechoslovakia together with the Act on Banks were discussed with IMF experts, especially those from Central Banking Departments, and the World Bank. Provisions contained in legislation on central banks, particularly those of the Bundesbank (Germany's central bank), were used. The decision to draw on the experience of this independent central bank of a federal country, which was successful in both its fight against inflation and the implementation of monetary policy, was made by the Czechoslovak Government's Financial Council following the Government's talks at Trienčanske Teplice. Finally, the draft laws on the European System of Central Banks and the European Central Bank, as produced by a committee of the EC Central Bank Governors in November 1990 which, inter alia, expresses the terms under which central banks may join this system were taken into account. The Act presented herein creates the legal foundations for the State Bank of Czechoslovakia's operations as a typical central bank, i.e. a specialized state monetary institution relatively independent of the State's executive and legislative bodies. A central bank must be autonomous in devising and implementing monetary policy, in exercising its monetary powers and instruments, and in pursuing its fundamental goal—stability of the national currency on the basis of price stability. This is particularly important in countries that are in the process of abandoning the model of a state-controlled economy and adopting a free market economy. However, a central bank's independence from government cannot be absolute and therefore the Act protects especially the central bank's independence from governmental interference as far as its fundamental goal is concerned. Unlike the situation set by Act No. 130/1989 the State Bank of Czechoslovakia will be headed by a team, as is the custom in central banks of economically advanced countries. In addition, the Act protects the necessary independence of management by firstly, the manner in which bank management will be appointed and, secondly, by setting a fixed term of service during which members of the Bank Board may not be removed except for reasons enumerated in the Act, and, in particular, not by reason of a change in government. The State Bank of Czechoslovakia is responsible to the general public to whom it reports on monetary developments. In addition, basic balance sheet data, the Annual Financial Statement and Report thereof will be made public on an on-going and regular basis. The Annual Financial Statement must be audited. The responsibility of the parliaments and the State Bank of Czechoslovakia's will be more distinct. At least twice a year the Governor of the State Bank of Czechoslovakia will deliver a report on monetary development to the Federal Assembly and in the same time inform the Czech National Council and the Slovak National Council. In addition to this formal reporting obligation, it is anticipated that there will be substantial growth in the day-to-day contacts between the State Bank of Czechoslovakia's Federal Headquarters its Headquarters for the Czech and the Slovak Republics, and the Federal Assembly Czech National Council and Slovak National

Council. 26 27 The Act on the State Bank of Czechoslovakia is based on Constitution al Law No. 556/ 1990 Coll. of Laws which amends Constitutional Act No. 143/1968 Coll. of Laws on the Czechoslovak Federation. In an economy based on a single domestic market and a single currency, the State Bank of Czechoslovakia, as the central bank, acts as a single juridical person which sets and carries out homogeneous monetary policy. Organizationally, however, the State Bank of Czechoslovakia, in addition to its federal headquarters, has two other headquarters representing the Czech Republic and the Slovak Republic. The powers and responsibilities of these three headquarters are defined in the Act. Unlike in the past, the competencies and activities of republic headquarters have been markedly increased; in particular, in regards to responsibility for banking transactions within their respective territories. Also, within their respective territories, republic headquarters will interact with the republic s budgetary and state administrative bodies as well as control branch offices and other organizational units. The highest body of the State Bank of Czechoslovakia responsible for monetary policy is the Bank Board whose composition is defined in Constitutional Act No. 556/1990 Coll. of Laws. Like Act No. 130/1989 Coll. of Laws, the Act confers control and coordination of the circulation of money, payments and settlements. The State JBank of Czechoslovakia continues to hold its exclusive right to issue banknotes and coin. The new Act replaces several hitherto generally binding legal regulations pertaining to monetary issues, the system of money and currency circulation. The Act greatly simplifies the legislation and removes the link which ties monetary legislation to Act No. 41/1953 Coll. of Laws on Monetary Reform, which has been amended repeatedly in the past but still does not meet today's requirements. Essentially, the Act approximates the situation which existed between the wars, but is simpler. The powers held by the State Bank of Czechoslovakia in these areas are reinforced. The intermediate level of governmental decrees that added alternative types of money to the system of legal tender have been eliminated. Decisions concerning the face value of banknotes will be at the sole discretion of the State Bank of Czechoslovakia and it may, and must, rationalize and adapt a system of banknotes and coin to the meet the needs of currency circulation. Rapid progress in the introduction of a free market economy has resulted in a commensurate growth in both the number of commercial banks and their business activities. These developments have necessitated the formation of banking supervision bodies at the State Bank of Czechoslovakia in accordance with Act No. 130/19~9 Coll. of Laws. The Act on the State Bank of Czechoslovakia combined with the Act on Banks provide the legal foundations for the State Bank of Czechoslovakia's effective supervision of banking under these new conditions and also for its responsibility for the prudential operation and meaningful development of the banking system. Banking supervision s primary objective is to protect depositors from the risks involved in commercial banking and to enhance the general public s confidence in the banking system an d the national currency. The prudential operation and sound functioning of banks and the entire banking svstem is heavily contingent on the effectiveness of the central bank s monetary policy. Consequently, banking supervision units of the State Bank of Czechoslovakia have been organized and their staff intensively trained. The Act assumes that banking supervision based on the above concepts will be performed by the State Bank of Czechoslovakia s bodies and banking licences will he granted and revoked - as per the Act on Banks - by the State Bank of Czechoslovakia in agreement with the Federal Ministry of Finance and

the Ministry of Finance of the Republic in which the bank in question will have its legal seat. For the first time, the Act regulates the State Bank of Czechoslovakia's transactions with the state and banks, its functions as the 'state's bank' and as 'the bank of banks', as well as, its trade in securities as is customary in the legislation on and the practice of central banks. In its ratified form, the Act on the State Bank of Czechoslovakia does not quantitatively set the income or expenditure levels of the national budgets. Its influence on the national budgets is merely qualitative; through the determination of the terms and conditions under which a national budget may use the financial resources of the State Bank of Czechoslovakia to bridge its deficits. 29 11. SPECIFIC Part One Basic Provisions Article 1 The State Bank of Czechoslovakia's position as the central bank of the state is defined. The State Bank of Czechoslovakia is a single juridical person. The fact that the State Bank of Czechoslovakia works to a certain extent as a central federal authority enables it to issue generally binding regulations and grant licences. The Act does not include the dictum contained in Act No. 130/19X9 Coll. of Laws to the effect that the State Bank of Czechoslovakia has the status of a central body of State Administration. This dictum was omitted, after comments were made at sectoral proceedings that the State Bank of Czechoslovakia was considered to be a central body of State Administration (which is at odds with the requirement for the Bank's independence from the governments). The words 'has the status of' were identified with the word 'is'. Therefore a new formulation was included in Article 1. As regards commercial relations the State Bank of Czechoslovakia has the status of an entrepreneur, it brings its own property rights to these relations. Article 2 The primary goal of the State Bank of Czechoslovakia is to ensure the stability of the Czechoslovak national currency and its purchasing power based on price stability. A similar fundamental objective is articulated in all modern laws on central banks as well as in the statutes being prepared on the European Central Bank. Another important activity and role of the State Bank of Czechoslovakia, as the central bank of the state, is the control of currency circulation and the coordination of the system of payments and settlements between banks. Distribution of banknotes and coin is dealt with in detail in Part Four. As new banks are established, the State Bank of Czechoslovakia's role in ensuring a sound banking and financial system expands. Banking supervision, together with the formulation of monetary policy, control of currency circulation and coordination of payments, is a major instrument for the achievement of the State Bank of Czechoslovakia's primary goal. Article 3 A new provision among the basic provisions of the Act is the obligation to present to the Federal Assembly, at least bi-annually, a report on monetary development while concurrently updating the Czech National Council and the Slovak National Council, as well as, the obligation to inform the general public on monetary matters at least once every quarter. The general public's and Parliament's greater access to information is to provide a counter-balance to the State Bank of Czechoslovakia's independence. Part Two Organization of the State Bank of Czechoslovakia The State Bank of Czechoslovakia's organization is undergoing changes based both on the Constitutional Act on the Czechoslovak Federation as well as those associated with the new concept of a central bank. Article 4 In accordance with the Constitutional Act on the Czechoslovak Federation~ the State Bank of Czechoslovakia may create federal and republic headquarters, branch offices and other specific-purpose organizational units. Articles 5 to 8 Like the Bundesbank and central banks in advanced economies, the State

Bank of Czechoslovakia shall be governed by the collective leadership of the Bank Board as its supreme managerial body. In addition to the setting of monetary policy, one of the Bank Board's most important tasks will be to provide a more detailed delineation of the jurisdiction between the federal and republic headquarters in respect to the performance of individual functions of the State Bank of Czechoslovakia. The Bank Board shall also stipulate, as is normal with independent central banks, the Governor's salary and/or other income and grant permission to employees' requests to participate in the managing, supervising and controlling bodies of commercial companies. Generally, however, due to a possible conflict of interest it is undesirable for staff exposed to classified economic information to work outside the State Bank of Czechoslovakia.

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31 Composition of the seven-member Banking Board is in accordance with the Constitutional Act on the Czechoslovak Federation. From among the plausible titles that could have been applied to Bank Board positions the titles of Governor and Vice-Governor were selected. These titles are used by most central banks and are consistent with this country's traditions (the National Bank was headed by a Governor). The title of Vice-Governor for all members of the Bank Board, other than the Governor, was agreed on in order to demonstrate the equal standing of the federal and republic headquarters (in the past, the federal headquarters used the title Vice-Chairman and the republic headquarters, Director General). Members are appointed to and removed from the Bank Board by the President of the CSFR upon the Governor's recommendation following discussions with the respective government. The State Bank of Czechoslovakia's independence in personnel matters is also expressed by both the six-year term for which a member is appointed to the Bank Board, as well as the enumeration of the grounds on which he/she can be removed. Although it is not explicitly mentioned in the Act, it is obvious that members can be re-appointed to the Bank Board subject to Article 14 of the Constitutional Act on the Czechoslovak Federation which stipulates rotation of citizens of the Czech and the Slovak Republics to the post of Governor. Consistent with objective of protecting the Bank's independence is the stipulation that members of the Bank's management may not hold positions such as Member of Parliament, or another governmental post, or serve in the capacity of manager, supervisor or controller of a commercial company or other bank. The decision-making process of the Bank Board as set forth in the Act will be described in more detail in its Rules of Procedure to be issued by the Governor. The Act ensures flexibility in the deliberations and voting of the Bank Board through its provision for members' mutual representation on the basis of a written power of proxy. This mitigates the danger of the Bank Board's deliberations being paralysed due to the physical absence of its members. This practice is widely used by other central banks (e.g. at the Austrian National Bank). The Act stipulates that the Governor is entrusted as the representative of the State Bank of Czechoslovakia vis-à-vis third parties. Articles 9 to 12 Using the legislation on the Bundesbank and its operational experience, the Act defines the competencies of the State Bank of Czechoslovakia's federal and republic headquarters in respect to its functions as a national central bank (these competencies and ensuing tasks will be defined in more detail by the Bank Board). In comparison with the existing legislation, the powers and responsibilities of republic headquarters have been markedly increased; these powers include management of branch offices and special-purpose organizational units of the State Bank of Czechoslovakia in the territory of the respective republic. In addition to acting as "the

bank of the Republics" they will be responsible for banking transactions which is the main instrument for influencing banking activity and liquidity within the Republics. Republic headquarters will supervise entities other than banks in their management of foreign exchange as per the Act on Foreign Exchange. The appropriate departments of the republic headquarters will carry out banking supervision to the extent delineated by the Bank Board, and will be furnished with commensurate powers. Article 13 The Act permits the establishment of advisory teams from the ranks of specialists who are not employees of the State Bank of Czechoslovakia, at both the federal and republic levels. These committees, which are envisaged to include representatives of commercial banks, business groups, theoreticians etc. will be entitled to submit recommendations concerning monetary policy to the State Bank of Czechoslovakia and its Bank Board.

Part Three Relations to Governments Articles 14 to 16 The institutional separation of the State Bank of Czechoslovakia from the governments and governmental institutions is an essential precondition for its independence. In carrying out tasks directed towards its main goal, the State Bank of Czechoslovakia is independent of instructions from the government. Its relations to the governments will be focused on advisory and consultancy activities and by taking a position on issues that concern the State Bank of Czechoslovakia's competencies. This is the reason why the Act provides for government officials to participate in Bank Board meetings, as well as, for the Governor and Vice-Governors in charge of republic headquarters to participate in governmental meetings. These provisions are based on the Act on the Bundesbank and the proposed statutes of the European Central Banking System and the European Central Bank.

Part Four Issue of Banknotes and Coins Article 17 The provisions of Article 8 of Act No. 130/1989 Coll. of Laws are basically adopted in the new Act except for a change in the specifications of the types of money the Bank is authorized to issue. It is explicitly stated that it may issue only banknotes and coins. Article 18 The remaining provision of the still valid section of Article 2 of Act No. 41/1953 Coll. of Laws is assumed; this provision has already been amended twice. Article 19 One of the primary functions of a central bank is to ensure sufficient reserves of money, the production thereof and, the execution of contracts with producers for supplies of money in order to ensure the faultless circulation of money. Article 20 ~n Act No. 130/1989 the provisions of this article included the obligation to ensure the protection of the national currency, printing of money and minting of coin. New conditions and opportunities for money production, particularly the fact that the banknote printers and mints are now totally independent of the State Bank of Czechoslovakia necessitate the specification of these powers of the State Bank of Czechoslovakia in the new Act. Article 21 Paragraph 1 sets forth the obligation on the part of entities to accept legal tender issued by the State Bank of Czechoslovakia. This constitutes the legal support for the provisions of Decree No. 155/1989 Coll. of Laws of the State Bank of Czechoslovakia on the circulation of money which specifies the obligations of entities in currency circulation. Paragraph 2 is a novel feature in Czechoslovak law. Nevertheless, it is not exceptional to the prevailing laws in neighbouring countries, for example, Germany and Austria, where the market in numismatic materials is highly developed. For collectors, coins are minted in various modifications (polished coin dies, double weight, luxury packaging etc.) Although such coins do remain legal tender and everybody must accept them at their face value for payment, thanks to their special treatments they become goods whose price follows the

rules of supply and demand. This special treatment of coins is not covered in the Collection of Laws. Similar regulations in other countries apply to coins of precious metals on which their face value is embossed but which are commonly traded for their precious metal content plus a minimum surcharge. Article 22 The provision is being re-introduced to reject the replacement of particularly grossly damaged banknotes. Before Decree No. 155/1989 Coll. of Laws came into effect banknotes damaged in this way were designated as intentionally damaged banknotes. However, in practice this resulted in conflicts with clients and discussions with the prosecutor's office as to whether a banknote may be designated intentionally damaged without starting criminal proceedings in a given case, or without a court's verdict ruling intentional damage. The types of damage are enumerated in the Act. The practice of the past, based on the provisions of Decree No. 155/1989 Coll. of Laws on the Circulation of Legal Tender and Compensation for Damaged Money, which permitted replacement of such banknotes was very lenient, for example when 100-CSK banknotes portraying Klement Gottwald were still legal tender. For now, the practice commonly prevailing in European countries will be resumed. Article 23 This article describes The State Bank of Czechoslovakia's duty to ensure that circulating money is clean. 34 35 Article 24 In accordance with the norms that prevail in other European countries, the State Bank of Czechoslovakia is obliged over a specified period of time to replace banknotes withdrawn from circulation with other banknotes. A minimum five-year period is stipulated, as compared to the usual one-year or two-year periods decreed by the Ministry of Finance. This provision should contribute to confidence in the legal tender. Article 25 Article 27 of Act No. 200/1990 Coll. of Laws on Transgression specifies sanctions for unofficial reproduction of money or its symbols. Supplementing this provision, the conditions under which reproduction of money symbols, and items that imitate money, may be produced must be specified. These conditions shall be set forth in State Bank of Czechoslovakia's executive directives. This provision is necessary in any legislation. Considering the wide spread availability of office copiers, the users of such equipment must be impressed with the notion that any reproduction of money on such equipment can be penalized. This will help to ensure faultless circulation of banknotes and coin. Article 26 The duty stipulated in governmental decree, No. 7/1954 Coll. of Laws (on the Circulation of Legal Tender, has been succeeded; at present, this duty is prescribed in Decree No. 155/1989 Coll. of Laws, Article 4. Since this provision represents a serious interference with individual rights, this duty must be set forth in a new law. Article 27 Authorization under letter a) combines the former right of the Federal Government to add other types (face values) of money to the system of legal tender stipulated by the Act on Monetary Reform, on the basis of the authorization contained in that act, with the duty to declare the issue of new types of money in the Collection of Laws. The rationalization for the issuance of new types of money is being prepared. The government will no longer be heavily burdened with decisions on questions the importance of which can only be perceived by the State Bank of Czechoslovakia. If the State Bank of Czechoslovakia is to be responsible for the faultless circulation of money, it must also have the powers to respond to the needs of money circulation, for example, by the introduction or termination of legal tender of a certain value. The provision contained under letter b) authorizes the State Bank of Czechoslovakia to issue a decree that describes the procedures to be followed by an entity when accepting and dealing in legal tender.

Decree No. 155/1989 Coll. of Laws, hitherto in force, will be amended, in particular, in connection to the provisions of Article 22. In relation to the provisions of Article 2 the State Bank of Czechoslovakia is authorized to issue a more detailed legal regulation concerning compensation for incomplete and damaged banknotes and coins. In connection with the provisions of Article 24 it is necessary that the State Bank of Czechoslovakia stipulates the time and manner of replacing money withdrawn from circulation, particularly the institutions authorized to carry out this replacement. It is not rational to allow individuals to reproduce money (Article 25). Therefore, executive regulations will set forth the conditions for which reproductions or items that imitate money may be allowed. Only violations of these conditions will then be treated as an infraction of the law.

Part Five Instruments of Monetary Regulation of the State Bank of Czechoslovakia Articles 28, 29 The State Bank of Czechoslovakia implements the aims and objectives of its monetary policies by way of setting the discount rate and other interest rates and limits as well as other terms and conditions for its transactions concerning credits, etc. The operational independence of a central bank includes the autonomous articulation of these instruments. The Act authorizes the State Bank of Czechoslovakia to regulate the interest rate on credits as well as the extent of credits granted by banks. This existing authorization (in accordance with Act No. 158i 1989 Coll. of Laws sets the upper limit of interest rates on credits granted by banks and the maximum aggregate of such credits) must be preserved for the period during which capital and money markets are being established; inclusion of such a provision in the Act was explicitly recommended by the IMF.

36 37 In order to ensure sound operation of the banking system and to limit the risks involved in banking operations, the State Bank of Czechoslovakia is entitled to stipulate prudential principles for the operation of banks. These principles are based on internationally applied rules recommended by the Committee for Banking Supervision attached to the Bank for International Settlement (BIS), and are also part of a series of EC Recommendations and Directives.

Articles 30, 31 By insisting on a minimum reserves requirement to be maintained by the banks, the credit-related activities and generation of money by commercial banks will be influenced by the State Bank of Czechoslovakia. The Act does not specify the technique for determining minimum reserves requirements (these can be set in relation to total deposits or total liabilities uniformly, or differentiated on the basis of deposit or liability portfolios. However, the Act does specify the maximum level of these reserves, and expresses the State Bank of Czechoslovakia's duty to apply the discount rate payable on such reserves exceeding the specified limit. On the other hand, the failure of a bank to keep the minimum reserves requirement shall be penalized in the form of an interest surcharge.

Part Six Transactions of the State Bank of Czechoslovakia Articles 32 to 34 State Bank of Czechoslovakia as the "bank of banks", keeps the banks' accounts for the purposes of interbank settlements of daily balances and to the extent and under the conditions specified in Part Five, carries out credit-related transactions. Through bank refinancing - together with the setting of the minimum reserve requirement - the State Bank of Czechoslovakia influences the activities and liquidity of individual banks and the entire banking system, thereby regulating the supply of money in the economy. The basic form of refinancing is through the discount market and purchase of bills of exchange and other securities as per Article 33. The Act also provides the possibility of credits against the collateral of securities (lombard loans). Article 34, Paragraph 2,

articulates the possibility of the State Bank of Czechoslovakia as the lender of last resort to grant, on an exceptional basis, short-term credit in order to secure the liquidity of a bank at risk. The terms of maturity listed in Articles 33 and 34 have been recommended by the IMF and are quite normal in the practice of foreign central banks - central banks are focused on short-term refinancing of banks. Article 35 and 36 The State Bank of Czechoslovakia as the State's bank (both the Federation and the Republics) keeps the accounts of the state budgets and effects payments from them, using funds from the applicable accounts. The aggregate balance of these accounts must not be overdrawn. The individual Ministries of Finance may appoint another bank to maintain these accounts without the consent of the State Bank of Czechoslovakia. The Act allows for short-term credits from the State Bank of Czechoslovakia by way of the purchasing of Treasury Bills to bridge temporary budget deficits, up to a certain limited amount, analogously to the existing practices in certain advanced countries. This provision does not prevent the government of the CSFR or the Republics from procuring the necessary funding from a source outside the State Bank of Czechoslovakia. The level of all credits from the State Bank of Czechoslovakia in a current year may not exceed five per cent of the income of the budget in question of the previous year. The Act makes it possible for the State Bank of Czechoslovakia to manage, upon authorization by the Ministries of Finance, government bonds which it may market pursuant to Act No. 530/1990 Coll. of Laws on Debentures, and perform other functions as the State's banker, acting as a fiscal agent". Article 37 To regulate the money market and to set interest rates in this market, the State Bank of Czechoslovakia, like other central banks, will buy and sell securities at its own expense on the free market. The importance of such transactions will grow with the development of financial markets. Article 38 A new possibility to actively influence liquidity on the money market is the authority of the State Bank of Czechoslovakia to issue its own securities and regulate the amount of money in circulation through their sale and purchase. The central bank may use this instrument in the event that it will not be able to use government securities for this purpose. 38 39 Article 39 As is customary with central banks, the State Bank of Czechoslovakia is entitled to keep accounts of its employees and provide banking services to them (for example, credit salaries to their accounts). The provisions that concern the accounts of juridical person~ applies in particular to the keeping of accounts of organizations in the sphere of defense and interior affairs, which have been and will continue to be maintained by the State Bank of Czechoslovakia. This provision makes it possible for the State Bank of Czechoslovakia to perform such activities to a very limited extent, otherwise the commercial banks have this responsibility. This is why the SBCS must respect the provisions of the Act on Banks in the performance of such activities. Part Seven Jurisdiction of the State Bank of Czechoslovakia in Respect to Foreign Exchange Management Article 40 Apart from the provisions based on the State Bank of Czechoslovakia's traditional functions (for example declaration of the rate of exchange between the Czechoslovak and foreign currencies), there is a new concept: the State Bank of Czechoslovakia's legal right not only to manage currency reserves but also to dispose of them. This is, in fact, the legalization of the existing situation which is currently regulated by Decree No. 70/199() of the Czechoslovak Government. This is a practical provision which allows the State Bank of Czechoslovakia to take a flexible approach. for example, when providing guarantees on foreign loans. Article 41 The State

Bank of Czechoslovakia will be allowed to engage in normal commercial transactions in foreign exchange and regulate the terms and conditions of such transactions. Within the limits of the State Bank of Czechoslovakia's competencies concerning foreign exchange management, it is necessary to regulate the procedures and possibilities of State Bank of Czechoslovakia in directing the development of the balance of payments. Here, it is necessary to respond flexibly to varying conditions that affect the development of the balance of payments; this flexibility, and at the same time the essential preconditions for the terms and conditions to be legally binding, will be made possible by relevant declarations in State Bank of Czechoslovakia's decrees in the Collection of Laws. Part Eight Other Activities and Powers of the State Bank of Czechoslovakia Article 42 In accordance with the legal position of the State Bank of Czechoslovakia and its function as the State's central bank responsible for the national currency and money circulation, the State Bank of Czechoslovakia shall submit draft legislation to the Czechoslovak Government; this does not prejudice the prerogative of the Republic Governments to whom the Czechoslovak Government, in the order stipulated, submits draft legislation for debate before passing draft acts to the Federal Assembly. Together with the Federal Ministry of Finance the State Bank of Czechoslovakia submits draft legislation on foreign exchange management and banking. Article 43 As far as payments and settlements are concerned, it is necessary to preserve the State Bank of Czechoslovakia's right to issue regulations of a lesser legal import. For example, regulations for clearing and the technical requisites of payment instruments, the technical parameters of credit cards. A particularly important right is that of State Bank of Czechoslovakia to specify in legal regulations the cases where payment in cash is disallowed. Such regulations may be needed in connection with the fight against the laundering of dirty money'. Article 44 Representative offices of foreign banks, which are not banks under the Act on Banks, shall be registered by the State Bank of Czechoslovakia in order to update and maintain an overview of the entire banking sector. 40 41 Article 45 The State Bank of Czechoslovakia must be legally authorized to negotiate payment and other types of agreements with foreign banks within the sphere of its competency. Article 46 As the banking system develops, the State Bank of Czechoslovakia's role of coordinating and developing the banking information system will expand. Like other central banks the State Bank of Czechoslovakia must be entitled to request from banks and other entities authorized to engage in banking activities information and data for combined statistical processing. This includes periodic checks for which the State Bank of Czechoslovakia shall declare a processing methodology, as well as extraordinary or one-time investigations. Articles 47 The State Bank of Czechoslovakia's authorization for investment and commercial activities is limited to the extent necessary to ensure its functions and activities. This encompasses, for instance, the construction of premises; or share holdings in commercial companies engaged in the printing of financial documents and certificates or the minting of coin- or infollllation services and imports of data processing technology for its own purposes. Part Nine Banking Supervision Articles 48 and 49 The basic mission of banking supervision is to act so as to ensure the banks' liquidity and mitigate the risks involved in banking operations, with the objective of protecting depositors and enhancing the public's confidence in the banking system and the Czechoslovak currency. However, for banking supervision to be effective, it must be applied not only to banks (under the Act on Banks) but also to other entities that

perform certain banking activities on the basis of permissions granted under other acts (i.e. trade in foreign exchange under the Act on Foreign Exchange, exchange office activities under the Trade Act). All these entities are obliged to facilitate the performance of these activities by the State Bank of Czechoslovakia's employees. The provision that banking supervision is applicable to deposits of natural persons has been reinstated as its omission would be contrary to the requirements of the fight against the "laundering of dirty money". This requirement is also included in an EC draft directive which will enter into force the first half of 1992. The primary objective of the fight against the "laundering of dirty money" is to prevent its transfer on an international scale through banking transfers. Article 50 Imposing sanctions on banks when shortcomings are detected by banking supervision is provided for in the Act on Banks. Analogous to these provisions, Article 50 specifies the procedure vis-a-vis entities other than banks engaged in certain banking activities. Financial Management of the State Bank of Czechoslovakia Article 51 Management of the State Bank of Czechoslovakia's finances must be adequate to its position as an independent central bank, and yet, must not be linked to any profit incentive as this would be contrary to the pursuit of the bank's primary objective, i.e. the stability of the Czechoslovak currency. The above legal guideline underlies the application of financial management at the State Bank of Czechoslovakia. The State Bank of Czechoslovakia shall manage its finances according to a budget approved by the Bank Board. Part of the budget is, in particular, an estimate of costs and revenues, the allocation of profits, and an investment plan. At the end of the fiscal year, the financial statements of the State Bank of Czechoslovakia will be generated and audited. Based on this, the annual profit and loss statement will be produced and submitted for approval to the Federal Assembly by the State Bank of Czechoslovakia. This annual profit and loss statement shall include a report on the State Bank of Czechoslovakia's budgetary expenditures, including wages and salaries. Due to the continuous supervision of the State Bank of Czechoslovakia's finances by the Federal Assembly, parliament will have an ongoing familiarity with its financial affairs. This process, in addition to the State Bank of Czechoslovakia's obligation to specify in greater detail and complement its annual profit and loss statement in keeping with the Federal Assembly's requirements, should therefore provide for a non-confrontational closing of the State Bank of Czechoslovakia's books and accounts in any given year. The State Bank of Czechoslovakia shall have a separate budgetary allotment. The State Bank of Czechoslovakia's budget is approved by the Bank Board in keeping with its position and its responsibility for the management of its own finances. Accordingly, the State Bank of Czechoslovakia shall not discuss its proposed budget with relevant bodies of the Federal Assembly; nor is it responsible for the manner in which the Federal budget is managed, nor subject to inspection of its budget by the Federal Ministry of Finance, nor will it bear the consequences of violating budgetary discipline. However, it shall submit to the relevant bodies of the Federal Assembly its annual profit and loss statement thereby providing a substitute for budgetary discussions by furnishing a final accounting of its annual performance and its subsequent review by the relevant bodies of the Federal Assembly. The State Bank of Czechoslovakia shall remain subject to wage and profit taxation. Profit tax is the difference between revenues and contributions to funds as stipulated by the Bank Board. Pending amendment of Act No. 563/1990 Coll. of Laws on the Federation's Budgetary Rules and the replacement by new legislation of

Act No 156/1989 Coll. of Laws on Revenues to the National Budget these le~Jai regulations remain applicable to the State Bank of Czechoslovakia with the exception of the provisions in Article 8, Para. 3, Article 11, Para. 3, Articles 15, 16 and 18 of Act No. 563/1990 Coll. of Laws, and Articles 7, ~, 1(), 15 19, 21 and 25 of Act No. 156/1989 Coll. of Laws. At the same time provisions of Article 24, Para. 1 of Act No. 156/1989 Coll. of Laws should be revoked; these empower the Czechoslovak government to set forth the level of the State Bank of Czechoslovakia's profit tax and the manner in which it is to be transferred. This provision is contrary to the newly proposed position of the State Bank of Czechoslovakia. Article 52 The Act assigns the State Bank of Czechoslovakia the ohli~ation to make public the Annual Report containing basic data on monetar~ development. In addition, the State Bank of Czechoslovakia's financial statements must be confirmed by auditors and the public apprised of its financial management. An important provision geared towards a continuous flow of information to the ~eneral public, is the duty to publish ten-day reports on the State Bank of Czechoslovakia's financial position (the balance sheet of selected aggregate items). This reporting requirement is an important means of supervision of the State Bank of Czechoslovakia by the g eneral public. In addition, this provision follows the requirements made of central b anks under the proposed act on the European Central Bank ~ystem and the European Central Bank (in the event weekly reports are required under this law, the Act on the State Bank of Czechoslovakia will be modified accordingly). Part Eleven General Provisions Article 54 Compared with the le gislation currently in force, changes have been introduced in two respects. The circle of persons obliged to keep confidentiality has been widened to include advisory team members. In addition to the Governor the Vice-Governors of the respective republic headquarters, within the limits of their authority, are empowered to exempt State Bank of Czechoslovakia employees from their confidentiality obligations. The prohibition on the State Bank of Czechoslovakia employees' involvement in the positions specified in the Act without the Bank Board's permission corresponds with the authorization to grant such permission (Article 5, Para. 2, letter g)). Part Twelve Transitional and Final Provisions Articles 55 to 58 The provisions of Article 55~ Paragraph 1 ensure that banknotes, coins and silver commemorative coins which are in circulation as legal tender under separate regulations continue to be regarded as legal tender, from 44 45 the day this Act comes into effect. Due to the considerable number of these regulations, reference No. 14 footnote is written in a general manner only. - The revocation of the provisions of Article 57, Item 2, relate to the State Bank of Czechoslovakia's new position as an independent institution. The revocation of the provisions of Article 57, Items 3 and 4, ensue from Part Four of the Act and require the transitional provisions contained in Article 55. In view of the legal directive on financial management of the State Bank of Czechoslovakia (Article 51), certain provisions in the Acts on the Federal Budgetary Rules No. 563/1990 Coll. of Laws and on Revenues to the National Budget No. 156/1990 Coll. of Laws are unsatisfactory. For this reason the application of these provisions in respect to the State Bank of Czechoslovakia are eliminated by Article 56. At Prague, 11 November 1991. dated December 20th, 1991 on banks The Federal Assembly of the Czech and Slovak Federal Republic has passed the following Act: **PART ONE BASIC PROVISIONS** Article 1 (1) For the purposes of this Act, banks are understood to be juridical persons with a seat in the Czech and Slovak Federal Republic, established in the form of a joint

stock company'), or a state financial institution as under the present Act (Article 36), which: a) accept deposits from the general public and b) extend credits and which, for the purpose of performing the activities specified under a) and b) above, have been granted permission to act as a bank (Article 4). (2) For the purposes of this Act: a) a deposit in a bank is understood to be any financial means entrusted to the bank which represent an obligation of the bank to the depositor to repay these financial means; b) a credit is understood to be financial means provided temporarily, in any form. (3) In addition to the activities specified in Article 1, Para. 1, letters a) and b) above, a bank may, unless otherwise stipulated in its banking licence, perform these further activities: a) investment in securities at its own risk; b) financial leasing; 46 47 c) payment system and settlements; d) issuance of payment instruments such as credit cards and travellers cheques; e) granting of guarantees; f) opening of Letters of Credit; ~) collection of payments; h) trading at its own or at a client's risk: (1) in foreign currencies; (2) in futures and options, including transactions involving rates of exchange and interest; (3) in negotiable bonds; i) participating in the issuance of shares and provision of ancillary services; j) financial brokerage; k) consulting services in entrepreneurial matters l) portfolio management on behalf of the client at his own risk including consulting; m) custody and administration of securities or other valuables; n) serve as a depository for an investment fund; o) exchange trading (purchase of foreign exchange); p) provision of banking information; r) rental of safe deposit boxes. (4) Performance of some of the activities listed in Para. 3 above may be subject to permission pursuant to a special act. (5) The banking activities listed in Para. 1, letters a) and b) and those listed in Para. 3 may also be performed by foreign banks through their branch offices, provided they have obtained the required permission as under Article 5 below. (6) The legal standing of the State Bank of Czechoslovakia is governed by a special Act-~. Article 2 No person may accept deposits from the general public without a banking licence unless stipulated otherwise in a special Act. Article 3 (1) The words "bank" or "savings bank", translations of the~e words or words in whose base these words appear, may only be used in the name of a juridical person which has been granted a banking licence, unless it is explicit from the context in which the words "bank" or 'savings bank' are used that this person is not engaged in activities listed under Article 1, Para. 1. 48 (2) The provision of Para. 1 above does not apply to juridical persons whose trade name or designation are well established or recognised by law or by an international convention. PART TWO BANKING LICENCE Article 4 (1) An application for a banking licence shall be submitted to the State Bank of Czechoslovakia. Together with the application for a banking licence is submitted a draft of the By-laws. The due form of the application as well as the minimum amount of equity - for joint stock companies, the minimum amount of the subscribed capital stock-(hereinafter equity") which is a pre-requisite for granting of a banking licence shall be set forth by the State Bank of Czechoslovakia in a decree" to be promulgated in the Collection of Laws. (2) The granting of a banking licence shall be determined by the State Bank of Czechoslovakia in agreement with the Federal Ministry of Finance and the Ministry of Finance of the Republic in which the bank intends to have its seat. The decision to grant a banking licence shall be signed by the Governor of the State Bank of Czechoslovakia and the Vice Governor entrusted with the management of the headquarters of the State Bank of Czechoslovakia for the respective Republic. (3) The granting of a banking licence shall be decided following

assessment of: a) the origin, sufficiency and composition of the equity and of other financial resources of the bank; b) the professional competence and civic integrity of the persons nominated to the bank's management; c) technical and organizational preconditions for the performance of the proposed activities of the bank; d) feasibility of the business plan as to future liquidity and profitability of the bank; e) the economic expediency of the bank. Article 5 1. A foreign bank intending to set up a branch office in the territory of the Czech and Slovak Federal Republic shall submit an application for a banking licence to the State Bank of Czechoslovakia. (2) The granting of a licence as per Para. 1 above shall be decided by the State Bank of Czechoslovakia in agreement with the Federal Ministry of Finance and the Ministry of Finance of the Republic in the territory in which the branch office of the foreign bank in question shall have its seat. (3) The granting of a licence shall be decided following an assessment of: a) the amount of capital and of other financial resources provided to the branch office by the foreign bank; b) technical and organizational preconditions for the performance of the proposed activities; c) professional competence and civic integrity of the persons nominated for management of the branch office; d) feasibility of the business plan; e) economic expediency; f) whether there are reciprocal terms for Czechoslovak banking activities in the country where the founding foreign bank maintains its seat. (4) The due form of the application as well as the minimum amount of capital provided shall be promulgated by the State Bank of Czechoslovakia" in the Collection of Laws. Article 6 (1) A banking licence shall be granted for an indefinite period of time and shall not be assignable to a third party. (2) Performance of certain banking activities listed in Article 1, Para. 3 may be excluded from or restricted in the licence. Article 7 A complete list of the banks and branch offices of foreign banks active in the territory of the Czech and Slovak Federal Republic shall be maintained by the State Bank of Czechoslovakia. It is available for inspection in all offices of the State Bank of Czechoslovakia. PART THREE ORGANIZATION OF A BANK Article 8 (1) A bank shall have a statutory body and a Supervisory Board. (2) A bank's statutory body shall consist of at least three members. The Supervisory Board shall consist of least three members; no employee of the bank may be a member of the Supervisory Board. (3) The powers held by the statutory body and the Supervisory Board shall be specified in the By-laws. Article 9 (1) In its By-laws a bank shall also specify: a) the structure and organization of the bank; b) the powers and responsibilities held by its senior officers; c) the powers and responsibilities held by other executives of the bank's head and branch offices, or other organizational units, if any, of the bank, who are authorised to perform banking transactions; d) the system of internal controls. (2) Certified copies of the By-laws and amendments thereof shall be kept at the State Bank of Czechoslovakia. Article 10 Banks and branch offices of foreign banks must be entered into the Commercial Register and shall deposit with the State Bank of Czechoslovakia an extract from the Commercial Register. PART FOUR OPERATIONAL REQUIREMENTS Article 11 Banks and branch offices of foreign banks shall provide on their premises, information in writing, in the Czech or Slovak language, concerning the conditions relevant to the acceptance of deposits, provision of credits and other banking transactions and services without prejudice to the provisions of Article 273, Para. 1 of the Commercial Code. Article 12 Banks shall maintain a pre-determined capital and reserves-to-assets or capital and reserves-to-liabilities ratio (Article 15). Article 13 Banks shall ensure that: a) the amount of credits granted to a

single debtor, and/or an economically associated group of debtors, does not exceed a pre-determined percentage of its capital and reserves (Article 15); b) the total amount of credits granted to the ten largest debtors and/or economically associated groups of debtors, does not exceed a pre-determined percentage of the total capital and reserves of the bank. Article 14 Banks shall preserve at all times their solvency in both Czechoslovak and foreign currencies. For this purpose they shall adhere to the rules set forth in respect to liquidity and prudential operation (Article 15). These rules may regulate in particular: a) the minimum level of liquid assets, and/or groups of such assets, in relation to the bank's assets or liabilities, or to a portfolio of assets and liabilities. This obligation may also be met by depositing a pre-determined portion of resources with the State Bank of Czechoslovakia; b) restrictions and conditions concerning certain types of credits or investments, deposits, guarantees and liabilities; c) restrictions and conditions directed to balancing the maturity of the bank's assets and liabilities; d) restrictions and conditions for non-secured foreign exchange positions.

Article 15 The rules set forth in Articles 12 to 14, as well as the meaning of the expressions "capital", "reserves", "assets" and "non-secured foreign exchange positions", and the extent to which branch offices of foreign banks are subject to these rules, shall be set forth by the State Bank of Czechoslovakia - in a decree to be promulgated in the Collection of Laws.

Article 16 (1) Prior approval of the State Bank of Czechoslovakia is required for: a) establishment of a capital interest by foreign persons in an already existing bank; b) a consolidation, a merger or a divestiture of a bank; the same applies to any decrease in a bank's equity unless the decrease is due to a loss; c) a transfer of capital quotas in excess of 15 % of a bank's equity, such a transfer being executed in one or more operations to any single person, or a group of persons acting in accord. (2) The provisions of Para. 1, letter b) do not prejudice the provisions of a separate prescription.

Article 17 (1) Without prior approval of the State Bank of Czechoslovakia, a bank shall not be allowed to: a) buy shares or acquire other capital quotas, the total of which would exceed 10% of the equity of a juridical person which is not a bank under this Act; b) buy shares or acquire other capital quotas in juridical persons who are not banks under this Act, exceeding more than 25% of the bank's capital and reserves. (2) The prohibitions in Para. 1 above shall not apply in cases where: a) the acquisition of shares or of other capital quotas is used to repay a granted credit; in such a case the bank shall be obliged to sell the shares or capital quotas acquired in this way within two years unless the State Bank of Czechoslovakia allows for an extension of this term; b) shares are acquired for the purpose of their re-sale to third persons. (3) In the granting of commercial credits, consumer credits and when collecting saving deposits a bank's share of the relevant market may not exceed 30%. In the case of an associated group of banks, this provision shall apply to the entire group. (4) Banks shall be obliged to ensure compliance with the provisions of Para. 3 above within a maximum of three years from the day this Act becomes effective.

Article 18 (1) A bank must not engage in transactions with persons that have a special relationship to the bank (Article 19) and which would otherwise, due to their nature, purpose or risk not be entered into with other clients. (2) A bank provides credits to persons mentioned in Para. 1 above only if its statutory body decides so on the basis of an analysis of the banking transaction under consideration and of the applicant's financial standing.

52 53 Article 19 (1) For the purposes of this Act, the persons who have a special relationship to a bank include: a) members of the statutory body and

management of the bank; b) members of the Supervisory Board of the bank; c) juridical persons exercising control of the bank, their major shareholders and their management; d) persons close to members of the statutory board. Supervisory Board, management and persons exercising control of the bank; e) juridical persons, in which some of the persons listed under letters a), b) and c) have an interest exceeding 10%; f) major shareholders of the bank and any juridical person under their control; g) members of the Bank Board of the State Bank of Czechoslovakia. (2) Control over a bank or any other juridical person is understood in this Act the ownership of more than 50% of the shares or other equity quotas in the bank or juridical person, or the right to elect the statutory body of the bank, or otherwise exert a decisive influence on the management of the bank or juridical person. A major shareholder is understood to be the owner of more than 10% of shares or other capital quotas. Article 20 The amount of non-mortgaged credit provided by a bank to any of its employees may not exceed that employee's total two-year gross income. The overall amount of credits provided by a bank to its employees may not exceed 5% of the bank's equity. PART FIVE ACCOUNTING AND COMMERCIAL DOCUMENTATION Article 21 (1) A bank as well as a branch office of a foreign bank, shall keep books and accounts in accordance with a special Act. (2) In the event a bank has a capital quota in one or more commercial companies or in other juridical persons in excess of 10% of its equity, its books and accounts shall also contain the consolidated data on such commercial companies or other juridical persons. Article 22 (1) Using the services of auditors pursuant to a special Act, a bank shall ensure: a) an audit of its Annual Financial Statement; b) an audit of its Profit and Loss Statement for the respective year; c) that a report is published on the audit of the Annual Financial Statement and the Annual Profit and Loss Statement. (2) A bank shall make the auditors it has selected known to the State Bank of Czechoslovakia, the latter being authorized to reject these auditors within 30 days of receiving notification. A bank shall provide notification of new auditors within 15 days following rejection by the State Bank of Czechoslovakia. (3) Persons having a special relation to a bank as under Article 19, Paragraph 1 may not be selected as auditors. (4) In the event any shortcomings are detected, the report as per Paragraph 1, letter c) above shall describe the influence of these shortcomings on the bank's performance and liquidity as well as on the creation and allocation of profits/ losses. Article 23 A bank shall be obliged to publish information contained in its Annual Financial Statement, audited pursuant to Article 22 in a manner set forth in a separate regulation and to issue its Annual Report for the purpose of making the information public. (1) Banks and the branch offices of foreign banks shall file documentation on executed transactions; in respect to transactions the value of which exceeds CSK 100,000 this documentation shall be kept on file for a period of at least five years. (2) Banks and the branch offices of foreign banks shall produce and submit to the State Bank of Czechoslovakia information and documents whose content, form, layout, closing dates and manner of presentation shall be set forth by the State Bank of Czechoslovakia. (3) In the event a bank has an equity interest of 20 per cent or more in one or more commercial companies or other juridical persons, the information and the documents as under Paragraph 2 above shall also include data concerning those other commercial companies or other juridical persons. 54 55 PART SIX REMEDIAL MEASURES AND PENALTIES Chapter 1. Article 25 The activities of banks and branch offices of foreign banks shall be subject to banking supervision performed by the

State Bank of Czechoslovakia-'. Article 26 (1) In the event the State Bank of Czechoslovakia detects any shortcomings in the activities of banks or of branch offices of foreign banks- such shortcomings consisting in a breach of the terms determined in its banking licence, as well as in a breach of this Act, or special Acts?', legal regulations and measures issued by the State Bank of Czechoslovakia, it shall impose: a) measures directed to remedy detected shortcomings, in particular, it shall order to restrict or terminate certain activity, it suspends the performance of a certain activity or withdraws the licence for the performance thereof, it imposes conservatorship as under PART SIX, Chapter II, or revokes the banking licence as under PART SIX, Chapter III. b) a fine of up to CSK 5,000,000 depending on the gravity of the detected shortcomings. (2) The fines set forth in Para. 1, letter b) above may also be imposed by the State Bank of Czechoslovakia on persons who have violated the provisions of Articles 2 or 3. (3) The penalty imposed under Para. 1, letter b) above shall not affect responsibility pursuant to other legal regulations. (4) Regulations pertaining to administrative proceedings shall be applicable to proceedings concerning imposition of a fine under Para. 1, letter b) above. Any appeal against a ruling to impose a fine shall be decided by the Bank Board of the State Bank of Czechoslovakia. (5) The imposed fines shall represent income of the state budget of the Republic in the territory of which the bank or the branch office of a foreign bank have their seat or the person defined under Para. 2 above has its seat or residence: in the event such a person does not have its seat or residence in the territory of either of the Republics, the fines imposed are income of the state budget of the Republic in the territory of which the infraction under Article 1 or 3 has occurred. (6) A fine under Para. 1, letter b) may be imposed within one year from the detection of the shortcomings, however, no later than ten years from the day on which these shortcomings occurred.

Chapter 11 Conservatorship Article 27 In the event a bank's financial situation or liquidity has been markedly or repeatedly at variance with the requirements set forth in or under this Act, and if the previously taken remedial measures or sanctions have not resulted in rectification of the situation, the State Bank of Czechoslovakia may impose conservatorship of the bank in question. Article 28 The decision to impose conservatorship shall contain: a) the reasons for imposing conservatorship; b) the name of the appointed conservator; c) the duration of conservatorship; d) possible restrictions or prohibitions to accepting deposits and providing credits; e) possible partial or complete suspension of the deposit transactions of bank clients. Article 29 (1) Conservatorship shall be effective on the day of its entry into the Commercial Register. Prior to this day, the State Bank of Czechoslovakia shall promulgate its decision in the Commercial Journal". (2) By the appointment of a Conservator is suspended the exercise of the function of the statutory body of the bank until the end of the conservatorship. The Conservator shall act in the capacity of the statutory body. Article 30 The Conservator shall be authorized to take any measures as may be necessary to restore the stability and liquidity of the bank, including the closing of branch offices and/or other organizational units of the bank. Article 31 If the situation of a bank requires the conservator may, with the approval of the State Bank of Czechoslovakia- prior to a completely, deposit transactions by the clients for a period of up to one year at the maximum provided that measures shall be taken to maintain the value of these deposits, without prejudice to the bank's obligation to pay interest on the deposits. Article 32 (1) During the conservatorship the State Bank of Czechoslovakia

may render financial assistance to the bank in question, to overcome a temporary lack of liquidity. (2) The demand for the repayment of financial assistance provided by the State Bank of Czechoslovakia as under Para. 1 above, shall have priority over all other liabilities of the bank.

Article 33 (1) Conservatorship shall be terminated: a) by abolishing conservatorship when the reasons for it have ceased to exist; b) upon expiration of the specified period unless extended; c) by revocation of the banking licence. (2) Termination of conservatorship shall be put into effect by an entry thereof in the Commercial Register).

Chapter 111. Revocation of Banking Licence

Article 34 (1) If serious shortcomings in the activities of a bank or a branch office of a foreign bank persist the State Bank of Czechoslovakia shall, in agreement with the Federal Ministry of Finance and the Ministry of Finance of the Republic in the territory in which the bank or the branch office of a foreign bank has its seat, revoke the banking licence. This step need not be preceded by imposition of conservatorship. (2) The banking licence may also be revoked: a) if equity is decreased due to a loss by more than 50% in a single year or by more than 10% a year for three successive years; b) if the bank has not received deposits from the general public for more than 18 months; c) if it was acquired on the basis of false information submitted in the application for licence; d) if the bank in question is a branch office of a foreign bank and this foreign bank has lost its banking licence in the country in which it is based.

Article 35 (1) In the decision to revoke a banking licence under Article 34 is given the date on which the banking licence is revoked, the decision of the State Bank of Czechoslovakia shall be published in the Commercial Journal" prior to that day; in respect to a branch office of a foreign bank, in addition, notification shall be given to the authority in charge of banking supervision in the relevant country. (2) As of the day the decision on the revocation of the banking licence becomes legally valid, the juridical person affected shall not accept deposits or provide credits, or perform any other activities, with the exception of those as may be necessary for the settlement of its claims and liabilities, under this Act, such a person is regarded as a bank until it settles all of its claims and liabilities.

**PART SEVEN
SPECIAL PROVISIONS FOR BANKS FOUNDED AS STATE FINANCIAL INSTITUTIONS**

Article 36 (1) A bank, as a state financial institution, may be created by a central body of the State Administration. Permission to establish such a bank shall be granted by the State Bank of Czechoslovakia in agreement with the Federal Ministry of Finance and the Ministry of Finance of the Republic in the territory of which the bank intends to have its seat if neither of them is the founder; this shall be done on the basis of an application the due forms of which are identical with the due forms of the application described in Article 4, Para. 1. 58 59 (2) The founder of a bank established as a state financial institution shall: a) arrange for the provision of equity; b) issue By-laws; c) appoint and remove its statutory body composed of three members; d) appoint and remove the Supervisory Board; e) confirm the Annual Financial Statement of the Bank f) decide on divestiture, consolidation, merger, and liquidation of the bank. (3) Divestiture, merger, consolidation or liquidation of a bank shall not be to the detriment of its creditors; in order for it to be effective a relevant entry in the Commercial Register is required. This provision does not prejudice the provisions of a separate prescription). (4) In the event a bank shall cease to exist due to a consolidation or a merger its assets and liabilities shall be assigned to the bank which takes them over.

**PART EIGHT
COMMON PROVISIONS**

Article 37 Banks shall provide services to their clients on a

contractual basis. A bank shall demand proof of a client's identity for each transaction whose value exceeds CSK 100,000 and for the renting of safe deposit boxes. Provision of client services on an anonymous basis may be refused by a bank. Article 38 (1) A bank shall deem confidential all bankin~ transactions and financial services including the balances on accounts and deposits. (2) A bank shall submit a report on all matters that are subject to confidentiality to persons authorised to perform banking supervision. (3) A report on matters concerning a client which are subject to confidentiality may be submitted by a bank without the client's consent only up on a written request of: a) a court of law for the purposes of proceedings in civil actions~); b) an authority engaged in criminal proceedings ~ associated with criminal prosecution; c) fiscal authorities in proceedings concerned with taxes, to which the client is a party. A written request shall contain the data on the basis of which the bank will be able to identify the action in question. (4) Authorization by Notary Public Offices remains unaffected under special regulation in respect to inheritance proceedings"". (5) A bank shall be entitled to compensation of the material costs it has incurred in connection with submitting a report as under Para. 3, letter a). Article 39 (1) Employees of a bank as well as members of the Supervisory Board and persons performing banking supervision shall be obliged to maintain secrecy in the business matters that concern the bank's and its clients' interests. The statutory body shall exempt the aforesaid from this obligation on the grounds of reasons listed in Article 3X, Paras. 2), 3) and 4). (2) The obligation of secrecy shall extend beyond the term of employment or a term of a similar relationship. Article 40 (1) The application for the ~renting of a banking licence, or for granting approval under this Act, shall be submitted by the applicant in writing to the State Bank of Czechoslovakia. (2) The decision to grant an approval under this Act shall be made within three months, or within six months in the case of an application for a banking licence, from the day of delivery of a complete application. Article 41 (1) An appeal against a decision made by the State Bank of Czechoslovakia shall be decided by the Bank Board of the State Bank of Czechoslovakia. An appeal against a decision made by the State Bank of Czechoslovakia in agreement with the Federal Ministry of Finance and the Ministry of Finance of the Czech Republic or the Ministry of Finance of the Slovak Republic shall be decided by the Bank Board of the State Bank of Czechoslovakia in agreement ~with the Minister of Finance of the Czech and Slovak Federal Republic and the Minister of Finance of the respective Republic. A filed appeal shall not defer an execution of the decision. (~) Regulations on administrative procedures~ shall be applied to the procedures concerning the application for and revocation of a banking licence under this Act, unless stipulated otherwise in this Act. 60 61 PART NINE TEMPORARY AND FINAL PROVISIONS Article 42 Juridical persons ~ctive as banks or saving banks under Act No. 158/ 1989 on Banks and Savings Banks shall be regarded as banks under this Act, as of the day this Act enters into force. Article 43 The loans provided by banks on the basis of re~ulations hitherto in force shall be regarded as credits under this Act. Article 44 (1) Until the legal regulations pertaining to insurance of deposits and interest accrued on deposits of natural persons by banks and branch offices of foreign banks enter into force, the deposits of such persons shall be guaranteed by: a) the Czech and Slovak Federal Republic for deposits with Komerční banka Praha, Všeobecná uverova banka Bratislava, Zivnostenská banka Praha and ~nvestiční banka Praha b) the Czech Republic for deposits with Česká státní spořitelna Praha c) the Slovak Republic for

deposits with Slovenska statni sporitelna Bratislava. (2) The provisions of Para. 1 above shall apply analogously to the interest accrued on the deposits of natural persons. (3) The provisions of Paras. 1 and 2 shall apply to the legal successors of the banks listed in Para. 1, letters a), b) and c) above analogously. (4) Insurance of deposits and interest accrued on deposits of natural persons by banks and branch offices of foreign banks shall be regulated by a special Act. Article 45 If under a legal regulation issued prior to this Act coming into effect a bank is obliged to provide credits under pre-determined conditions and if damages are therefore incurred to its property, the bank shall henceforth be entitled to compensation for this detriment from the state budget to which its levies or taxes are due. Article 46 Act No. 158/19~9 of the Collection of Laws on Banks and Savings Banks is cancelled. Article 47 This Act shall enter into effect on February 1st, 1992. ') Commercial Code No. 513/1991 of the Collection of Laws. -) Act No. 22/199~ on the State Bank of Czechoslovakia. ') Article ~. Act No. 131/19X9 of the Collection of Laws. ~) Act No. 63/1991 of the Collection of Laws on Protection of Economic Competition . ') Para. 116 of the Civil Code No. 40/1964 of the Collection of Laws in the wording of subsequent prescriptions. f) Act No. 563/1991 of the Collection of Laws on Accounting. ') Act No. 131 / 1991 of the Collection of Laws on the State Bank of Czechoslovakia. Foreign Exchange Act No. 528/ 1991 in the wording of subsequent prescriptions. Y) Civil Court Procedures No. 99/ 1963 of the Collection of Laws in the wording of subsequent prescriptions. ") Act No. 141/ 1961 of the Collection of Laws on Criminal Court Proceedings (Code of Criminal Proceedings) in the wording of subsequent prescriptions. ") Act No. 95/1963 of the Collection of Laws on State Notary Office and Procedures before the State Notary Office (Notarial Code), in the wording of subsequent prescriptions. ") Act No. 71/1967 of the Collection of Laws on Administrative Procedures (Code of Administrative Procedures) in the wording of subsequent prescriptions. 62 63 BACKGROUND TO THE ACT ON BANKS ! 1. GENERAL As of January 1, 199(). Act No. 158/19~9 Coll. of Laws on Banks and Savings Banks together with Act No. 13()/19~9 Coll. of Laws on the State Bank of Czechoslovakia provided the legal foundations for a two-tier banking system. However, these Acts were based on the concept of restructuring the economic mechanisms that prevailed at that time. Act No. 15X/ 19X9 Coll. of Laws was not consistent with the requirements of the current economic reform and did not relate to banking laws in a free market economy. Consequently, an amendment of Act No. 158~ 19~9 Coll. of Laws was out of the question and with the help of IMF experts and using certain features of some European countries' legislation, a new act was prepared. In addition, EC Directives for Commercial Banking were taken into account thereby ensuring the new Act's compatibility with EC legislation. The Act formulates the basic criteria required of banks in order to conform to the objectives and responsibilities of the State Bank of Czechoslovakia- a stable national currency, a functioning and efficient currency and payments system and prudential banking procedures. Banking activities based on such principles will protect the depositors' interests and contribute to the public's confidence. This Act creates a discriminating environment for the granting of banking licences and the operation of banks, thereby establishing the prerequisites for a sound banking system. It is liberal in terms of permitting the introduction of foreign capital. Consequently, the Bank Act, once in effect, should contribute to the creation of a competitive commercial banking sector and to its prudential operation. The Act employs

the concept of universal banks - it does not specify classifications of banks and does not distinguish between the activities carried out by universal banks, savings banks or other types of banks. In this way it allows a bank's organizational structure to be responsive to the supply and demand for banking services and products in the marketplace. Unlike Act No. 153/1990, the new Act sets forth a unique definition of a bank which is - an institution which accepts deposits and provides loans. This definition (Article 1) is modelled on the definition contained in the Second Directive of the EC Council. In order to be permitted to perform these activities a banking licence is required. Having obtained this licence a bank may, in addition to the above-mentioned activities (which in combination with the licence render it a bank), be involved in other activities, the parameters of which are defined in the Act. Banking licences are granted and revoked by the State Bank of Czechoslovakia with the agreement of the Finance Ministries. In all economically advanced countries, banks are subject to supervision. In terms of the organization of such supervision there are three basic models: a) inside the central bank b) in an independent financial institution c) at the Finance Ministry Banking supervision is primarily responsible for: vigilance in terms of the prudential and balanced development of the banking sector; limiting the risks associated with banking operations in order to protect depositors' interests; and, promoting the public's confidence in the banking sector, the latter being an important factor for a stable currency. A stable currency is the principle responsibility of the central bank which in addition sets monetary policy and acts as the "bank of banks" vis-a-vis the banking sector, as well as its "lender of last resort" in the event a bank's liquidity is endangered. Therefore, it appears to be logical and widely practised throughout the world - to have banking supervision incorporated into the organizational structure of the central bank. This is how banking supervision is organized in countries such as Great Britain, the Netherlands, Italy, Ireland, Portugal, Greece, Australia and New Zealand, and also in the dynamically developing countries such as Korea, Malaysia and Indonesia, as well as in the former socialist country of Poland. There is a tradition of independent banking supervisory institutions in a number of countries. Nevertheless, most of these institutions are, in organizational and functional terms, linked to their respective central banks. In all cases these central banks maintain internal departments which provide all the necessary information on banks - their liquidity, etc. without which it would not be possible to design or flexibly apply monetary policy. All countries using this organizational model have highly developed market structures and financial systems and, also have advanced democratic systems. When performing banking supervision, the relevant institution relies on contractual cooperation with independent auditors and other specialists. The principal portion of incurred costs for this purpose is usually covered by the banks, which is yet another reason to develop a strong and rich banking sector. Typical of this group of countries are the U.S.A., Germany (in these two the powers of the central bank are also defined), France, Belgium, Canada, Norway, Sweden and Switzerland. The third approach, where the Finance Ministry is solely in charge of banking supervision, exists only in Austria. In Spain and Japan these powers are shared with the central bank. Banking supervision in Hungary was initially established at the Finance Ministry but it is now managed independently. Due to the differing priorities of fiscal and banking supervision authorities, as well as, the need to free both banking supervision and monetary policy from any undue influence caused by political changes in the state and

its bodies, it can be argued that banking supervision should not be under the Finance Ministry. In Czechoslovakia, the nascent banking sector is forming relatively quickly. In response to these developments a very small group of specialists within the State Bank of Czechoslovakia have been intensively training for banking supervision activities with the help of the IMF, World Bank and other central banks. However, at this time, external to the bank there is a shortage of independent experts such as auditors and accountants to work in the banking sector. Therefore, given both these facts, it is not reasonable to separate the limited 'capacity' of banking supervision at this time. The Act sets forth the principles for: the organization of banks; operational requirements; prohibited activities; banking transactions with persons having a close relationship to the bank; as well as, the principles of accounting and control, publication of annual financial statements and an independent auditors verification of the same. An overwhelming majority of these provisions are new. What is particularly important are the demands made on banks to maintain capital adequacy and to diversify loans and liquidity in both Czechoslovak and foreign currencies. Together these provisions constitute the rules for prudential operation recommended by the IMF and EC. In the event a bank fails to adhere to these provisions it will be asked to introduce remedies, or face sanctions as defined in the Act. Like other countries with an unstable banking sector, procedures for conservatorship have been introduced and stipulated should the need arise. In order to take steps against the laundering of dirty money" the draft Act contains several provisions based on the EC Council's relevant directives. The new Act does not have power over the state budgets.

66 67 11. SPECIFIC Part One Basic Provisions Article 1 Banks are juridical persons based in the CSFR that receive deposits from the general public thereby assuming a liability; provide loans; and, have been granted a banking licence. The definition of a bank in the Act is based on the EC definition. Only banks may engage in the above two activities, because only banks are subject to the provisions of this Act, prudential regulations and other rules imposed on banks~ and above all, because they control monies that belong to depositors whose interests must be thereby protected. A bank may be a joint stock company or a state monetary institution. Experts frequently ask the question why the Bank Act narrows the permissible legal forms of a bank to these two. The fact is that, in the Czechoslovak banking system, no bank has taken a legal form other than that of a joint stock company or a state monetary institution - although recent legislation allowed for co-operative banks or joint ventures. This fact, then, is an indication of which legal form has proved most efficacious. The Commercial Code passed by the Federal Assembly on 5 November 1991 no longer provides for the legal form of a joint venture. Among the forms that a company may take under the Commercial Code, a limited liability company does not completely meet the legal criteria required of a bank; the same shortcoming applies to the co-operative form. Any manipulation of the law to meet the requirements of the banking sector would necessitate the creation of a quasi-joint-stock company unable to issue shares. Moreover, a limited liability company is meant to undertake business of a lesser magnitude than that assumed for banks (the minimum equity of a bank must be at least 300 million Czechoslovak crowns). Co-operatives are, due to their nature, also predestined for a different type of business than banking. Included in the law is a List of Activities which is subject to mutual acknowledgement (Annexe 2, EC Directive), and which define the scope of activities that a bank may perform under a licence granted by an EC country

and which is recognized by other EC member states. The list of activities a bank may engage in (Article 1, Para. 3) has been amended in order to coincide with the Commercial Code, the Foreign Exchange Act and the Act on Investment Companies which is now in the process of being drafted. Companies that invest in securities are not considered to be banks if they generate their resources through the sale of shares etc. as there is no direct liability on the part of such an institution; its resources are not borrowed". By the same token, trading companies that provide loans from their own capital or companies that provide consumer credits without accepting deposits are not banks. In none of these cases is there any reason to 'resolutely' protect depositor's interests as stipulated by this Act.

Article 2 The requirement for an explicit articulation of this principle in the law governing banking comes from EC Directives.

Article 3 Protection of the words "bank" and "savings bank" is a new provision. However, this provision provides no grounds for differentiating between the institutions of a savings bank and a bank.

Part Two Banking Licence

Articles 4 and 5 A banking licence shall be granted and the establishment of a new banking institution shall be decided in agreement with the Finance Ministries. The Act sets forth the nature of the documents to be attached to the application, the due form of which will be declared in the Coll. of Laws. The Act sets forth the criterion that will be assessed in the application ruling. These include, primarily, capital adequacy and, professional, technical and organizational facilities adequate to the expected scope of activities. Investigation of the capital's origin constitutes one measure taken in the battle against the 'laundering of dirty money'.

Article 6 In the process of deciding on an application for a licence, the prerequisites for other banking operations will be investigated (Article 1, Para. 3) so that a concurrent decision can be made on restricting or prohibiting certain activities. There is no legal requirement for the State Bank of Czechoslovakia to publish the granting of a banking licence as there is with the revocation of a licence; it is up to the bank concerned to "let its presence be known". However, a list of all banks granted licences is to be available in all offices of the State Bank of Czechoslovakia, i.e. at its federal and republic headquarters and all branch offices.

Part Three Organization of a Bank

Articles 8 to 10 With a view to protecting depositors and mitigating risks, the Act sets forth some requirements for the organization of a bank, e.g. the principle of at least three members on its statutory board, a Board of Supervisors composed of persons other than the bank's employees, usually from the ranks of shareholders; these conditions are then augmented by the requirement of an independent audit under Article 22. The Act also prescribes certain features of the By-Laws. In the first place, the Act demands that the By-Laws specify the powers held by those executives of a bank authorized to make transactions, as well as, describe the system of internal controls; these aspects are taken into account at the licensing stage.

Part Four Operational Requirements

Article 11 The Act ensures that a bank's clients and persons interested in banking transactions and services have the opportunity to obtain relevant information as to the conditions under which each bank transacts and provides services. As well, the provisions of the Commercial Code contained in Article 273, Paragraph 1 cited below is applicable to banking transactions. "A part of what is contained in a contract may also be defined by way of reference to general commercial terms drawn by specialized or special-interest organizations, or reference to some other commercial terms that are known to the contracting parties or attached to the draft contract".

Articles 12 to 14 Banks shall adhere to the principles and rules designed to

help minimize the risks involved in banking transactions, thereby protecting the depositors' interests. The rules contained in the Act have been constructed in accordance with IMF and EC recommendations. Article 13 stipulates that those assets of a bank whose major part are comprised of loans be adequately offset by its capital and reserves. The capital base of our banks and savings banks is minimal at the present time and will be increased gradually in order to achieve the standards required by the EC. In order to minimize risk, a bank as a creditor should not be excessively exposed to certain debtors. For this purpose Article 13 sets forth the principle for loan diversification. Banks must ensure their liquidity in both Czechoslovak and foreign currencies on a day-to-day basis. Therefore, they must adhere to the rules that define the relations between a bank's total assets and liabilities (for instance between medium-term and long-term sources of funding, between short-term assets and liabilities in foreign currencies etc.). Such relations as well as other requirements for balancing the maturity of both assets and liabilities, the balancing of non-hedged foreign currency positions are also designed to reduce the risk of a bank incurring interest and exchange rate losses.

Article 15 It is not feasible to incorporate into the Act any numerical expression of the rules defined in Articles 12 to 14, or a detailed description of the calculation methodologies. Nor is this done in countries having advanced and stabilized banking systems and economies. For instance, Germany uses the concept of notification (Bekanntmachung) of the principles and explanations for a credit institution's equity and liquidity. Moreover, this system of rules and criteria is just developing in our country, and the requirements will become more and more challenging, particularly in respect to a bank's capital adequacy. Regulations will be declared in the Coll. of Laws, along with the due form for a banking licence, by the State Bank of Czechoslovakia pursuant to Act No. 131/19X9 Coll. of Laws.

Article 16 Certain transactions undertaken by banks, like the merger of banks or capital transfers and equity reductions shall require prior approval by the State Bank of Czechoslovakia. Prior approval is also required for the introduction of foreign capital into an existing bank. The objective is not to completely prevent the influx of foreign capital; the objective is to optimize the degree of foreign involvement in the banking sector.

Article 17 Without prior approval of the State Bank of Czechoslovakia, banks are barred from holding more than 10 per cent of a nonbank or commercial company's capital. At the same time, the maximum amount of such investments is set at 25 per cent of a bank's capital and reserves. This measure is designed to prevent unhealthy alliances between banks and commercial companies. Circumstances under which these prohibitions are not applicable are also defined. The anti-trust provision contained in paragraph 3 - included in the Act on the basis of a Member of Parliament's motion for amendment - helps to create a competitive environment.

Articles 18 and 19 In accordance with the requirements on banking ethics and taking into consideration the legislation in place in advanced countries, the new Act introduces some restrictions on banks' entrepreneurial activities. A bank must not provide commercial advantages to persons who manage or control, or have influence over its management, or in the case of natural persons, their close relatives. This objective is to prevent corruption as well as to deflect a bank from making high-risk and detrimental transactions for personal gain. Transactions involving credits made with persons having a special relationship to a bank may be performed by the bank only on the basis of a decision by the bank's statutory board.

Article 20 There is a ceiling on credits granted to bank employees and

unsecured by a mortgage, the ceiling being double the employee's annual income. On the whole, a bank may grant credits to its own employees up to 5 per cent of its equity. Part Five Accounting and Commercial Documentation Article 21 Properly maintained books and Accounts are important indicators of a bank's status at any given moment. Bank book-keeping and accounting shall follow a separate act. Financial information on banks controlled by a bank under review shall also be required (consolidated accounts). Articles 22 and 23 An independent audit of a bank's annual financial statement and profit and loss account for the fiscal year is a fundamental requirement for external supervision of the bank, while its duty to publish the data contained in annual financial statements and the annual report constitutes an important element for the promotion of the bank's commercial activities; these published reports provide an important decision tool for the public. Article 24 In compliance with the requirements for combatting the "laundering of dirty money" and, at the same time, in order to facilitate banking supervision, banks are obliged to file specific documents. Performance of banking supervision requires access to information including the operations of commercial companies in which a bank holds shares. The obligation to produce for the State Bank of Czechoslovakia certain documents 72 73 and information is consistent with its authority, under the State Bank of Czechoslovakia Act, to request from banks documents and information required to develop and implement monetary policy as well as to summarize activities in this economic sector. Part Six Chapter I Remedial Measures and Penalties Articles 25 and 26 The State Bank of Czechoslovakia's authority to perform supervision over banks and subsidiaries of foreign banks is set forth in the State Bank of Czechoslovakia Act (Article 48) of the Coll. of Laws. This Act also stipulates that banking supervision is to follow the basic rules of supervision (Act No. 4(5)/1991 in the Coll. of Laws on Supervision in the CSFR, Part Two) with exceptions as listed. When banking supervision detects shortcomings the State Bank of Czechoslovakia may use a range of measures vis-a-vis banks and foreign bank subsidiaries geared towards remedying the detected shortcomings and/or the restriction or termination of certain activities including the revocation of the bank's licence. The State Bank of Czechoslovakia may impose a fine of up to CSK five million. In addition, it may impose an analogous fine on persons who take deposits from the general public without a licence or use the word "bank-" or "savings bank" in their name even though they have not been granted a banking licence. Imposition of a fine is limited to one year after the discovery of breach and ten years from its occurrence. Chapter 11 Conservatorship Article 27 Imposition of conservatorship signals serious intervention in a bank's affairs. Conservatorship may be ordered if a bank contravenes the requirements (e.g. for liquidity) set forth in the Act or in connection with the Act. The objective of conservatorship is to "cure" the bank without damaging its depositors. Article 28 The decision to impose conservatorship must, in addition to the abovementioned reasons, contain measures introduced to prevent a further deterioration in the bank's position. In order to consolidate the bank and restore its liquidity, deposits may be frozen. This is a serious step which represents a temporary interference with customers' proprietary rights. Each customer enters into a contract with the bank under which he entrusts his deposits to the bank under certain terms and conditions. However, his related rights and the bank's commitment to return deposits are not absolute. In the event of bankruptcy, a client's right to redeem his deposit might only be partially met. The concept of

conservatorship is first to help restore the bank and avoid imminent bankruptcy. Limitations imposed on customers through a temporary freezing of deposits is therefore a necessary momentary restriction of the client's rights. Article 29 Publication of the decision to impose conservatorship is intended to ensure that the general public is informed of the fact that the bank in question is working under altered circumstances; a decision on conservatorship enters into effect only after it has been made public. Suspension of the bank's management duties and their assumption by the Conservator is a necessary precondition of achieving the objectives of conservatorship. Technicalities such as entry into the Commercial Register and lodging of signature specimens, are obligatory. Articles 30 and 31 In the interest of consolidating a bank, the Conservator is authorized to introduce the necessary measure, including the closing of the bank's subsidiaries and upon approval of the State Bank of Czechoslovakia, the freezing of deposits (Article 31) for a maximum period of one year. Article 32 Commitment to restoring a bank may also be expressed through financial assistance provided by the State Bank of Czechoslovakia. Priority repayment is based on the assumption that such help is provided as a 'last resort' and outside the normal transactions between a central bank and other banks. 74 75 Article 33 Conservatorship ends upon expiration of its term provided the desired results have been achieved. It may also be terminated earlier if the cause for conservatorship has ceased to exist. However, in the event conservatorship does not procure the desired results, the banking licence is revoked and the bank in question is liquidated in the manner specified in the Commercial Code (Articles 102 and subsequent Articles). Chapter 11 Revocation of Banking Licence Article 34 If the remedies taken to restore a bank, either prior to the implementation of conservatorship or after a failed conservatorship, prove to be ineffective the bank's licence is revoked. Other grounds for revocation of a licence are derived from relevant EC Directives, in particular, a bank's inactivity in its major line of business i.e. the taking of deposits from the general public. Article 35 Revocation of a licence constitutes interference with a number of legal relations to which a bank is "a party to". The Act therefore demands that such decisions be made public. The Bank's activities are restricted to settlement of its outstanding liabilities and claims as of the day the revocation becomes effective. 76 Part Seven Special Provisions for Banks Established as State Financial Institutions Article 36 State financial institutions - which will continue to exist to a certain extent - lose their legislative foundation on repeal of Act No. 158/1989 of the Coll. of Laws on Banks and Savings Banks. Their legal position must therefore be reinstated and the Founder's right vis-a-vis state financial institutions preserved. Privatization of state financial institutions is governed by Act No. 92/1991 of the Coll. of Laws. The emergence of a state financial institution, in the case of an extraordinary need, is not ruled out by the new Act. Part Eight Common Provisions Article 37 Banking services shall be provided on a contractual basis as a matter of principle. The contents of such contracts shall be regulated by the Civil Code or the Commercial Code as the case may be, depending on the type of transaction or service. Services may be provided on an anonymous basis to clients within certain limits but a bank is entitled to refuse to hold a client anonymous in respect to any or all of its services. ~n respect to transactions valued over CSK 100,000 and the leasing of safe deposit boxes a bank is obliged to request proof of identity from the client. This regulation appears to be necessary from the perspective of combatting 'the laundering of dirty money' and corresponds to the requirements of the EC Directive

in this respect. While maintaining banking ethics, banks, within the limits of the law, must take the requirements directed against the legalization of "dirty money" into consideration. 77 Articles 38 and 39 Paragraph 1 in Article 38 defines the term 'confidentiality' in banking. The duty to maintain secrecy in confidential matters is a completely normal obligation on the part of bank staff. A breach of this obligation under law may warrant the client's claim for compensation for damages caused to him due to a violation of banking confidentiality. The duty to report confidential banking matters and consequently the necessity to exempt the affected staff from the obligation of secrecy ensues from separate laws. Articles 40 and 41 Rules of Administration shall be applied to proceedings that concern the granting of a licence, and/or approval under this Act. The Act creates the preconditions for ensuring the sound working of the banking system in the interest of protecting depositors and, therefore, must provide the responsible authorities with the power to make decisions on applications under this law, taking into account the interests of the total banking system. The specified time period for reviewing applications takes into account the challenges of assessing applications which require a high level of expertise. The period of six months is needed especially when looking at applications for the licensing of foreign banks in the CSFR. In these cases there is a need to co-operate, inter alia, with banking supervision authorities in the home country of the foreign bank in question. The possibility for appeal of a decision is analogous with the Rules of Administration according to which any decision made by a central authority of State Administration may be appealed. Part Nine Temporary and Final Provisions Articles 42 and 43 The legal position of existing banks and savings banks is reconciled with this Act. The hitherto used terms "loan" and "credit" are hereby combined. The differentiation made in the past between a "loan" to a natural person and a "credit" to a juridical person is no longer applicable. Article 44 The existing guarantees for natural persons deposits with state financial institutions are modified so as to preserve such guarantees until a system of guarantees for deposits and accrued interest are created under a separate act. Article 45 This provision addresses the situation of those banks and savings banks which remain obliged by law to provide loans and credits that are financially detrimental to themselves. This is particularly the case in housing construction. Unlike Act No. 158/1989 of the Coll. of Laws under which banks and savings banks were entitled to claim compensation for such damages, they now have a lawful right to such compensation. At Prague. 11 November 1991.