

THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA
Law on Financial Institutions

The Parliament has adopted the following law

CHAPTER I
GENERAL PROVISIONS

Article 1. Scope of the law

The scope of this law is to protect the interests of household depositors and information on deposits, to prevent excessive risk to the financial system, to promote a strong and competitive financial sector and to facilitate the market forces to operate in the provision of financial services.

Article 2. Institutions covered by present law

(1) This law shall apply to financial institutions except for who, by virtue of the nature or size of their business or the origin of their resources, shall be exempt from the operation of this Law in whole or in part by the National Bank.

(2) The National Bank has the right to make financial institutions other than banks, additionally subject to provisions of this Law, that refer to bank activities.

Article 3. Main definitions

The following definitions are used in this law:

administrator - means a member of the Board of Directors, of the executive body, of the Audit Committee, the chief accountant, manager of a branch of the legal entity, as well as any other person who alone or together with other has the legal or statutory authority to enter into commitments for the account of such entity;

affiliate of the legal entity means a person: a) that holds control over the legal entity; b) that is under control by the legal person; c) that is under common control with the legal entity, by another legal entity; d) that is a member of the Board of Directors, of the executive body and of the Audit Committee of the legal person; e) that according to the civil legislation is related to the individual-member of the Board of Directors, of the executive body, of the Audit Committee of the legal entity- by marriage or consanguinity of first and second degrees; f) which affiliation is determined by the National Bank of Moldova in normative acts that are to comply with generally accepted principles on efficient banking supervision;

bank - means a financial institution, accepting deposits or their equivalents of individuals or their entities, transferable by different payment instruments and utilizing these funds in whole or in part for lending and investing on its own account and risk;

capital - means the net worth of funds owned by financial institution that represent the difference between its assets and commitments (debts);

regulatory capital - means a financial institution's own funds it must maintain in accordance with regulations issued by the National Bank that will describe the components of regulatory capital and the minimum amount which must be maintained in relation to risk weighted assets or total assets;

equity interest - means any ownership right or voting right with respect to a legal entity capital;

significant interest - means a direct or indirect holding of an interest in a legal entity, that represents the equivalent of 5 percent or more of the equity or of the voting rights, or that makes it possible to exercise a significant influence over the management or policies of that entity;

debt security - means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument

giving the right to acquire another negotiable debt security by subscription or exchange. Negotiable debt securities may be in certificate or in book-entry form;

credit - means any commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and to payment of interest or other charges on such amount, any extension of the due date of a debt, any guarantee issued, and any commitment to acquire a debt security or other right to payment of a sum of money;

subordinate debt – means a sum of money placed on terms:

- that is not ensured;

- that the maturity term is 5 years at least. If the maturity does not provide a fixed term, the debt is to be repaid on demand by the holder within a term of 5 years at least from the date of placement and providing the preliminary granting by the National Bank of Moldova of the permission issued under conditions of Art. 7 paragraph (2);

- that is not reimbursed before maturity, except cases of bank liquidation;

- that in case of bank liquidation, is to be repaid after redemption of claims by all creditors of the bank, but before redemption of claims by shareholders;

- that may be considered as component of the regulated capital under terms established by the National Bank;

deposit - means a sum of money paid on terms:

- that is to be repaid, with or without interest or premium of any kind, and either on demand or at a time or in circumstances agreed by or on behalf of the depositor (person making the payment) and the bank that accepts money;

- that are not referable to the provision of property or services or the giving of security;

- whether or not evidenced by any entry in a record of the bank that accepts money, or by any receipt, certificate, note or other document;

household deposits - means deposits of individuals;

capital distribution - means a distribution of cash or other property by a financial institution to its shareholders made on account of that ownership, but not including:

- any dividend consisting only of shares of the institution or rights to purchase such shares;

- any amount paid on deposits of a cooperative bank that the National Bank determines is not a distribution for purposes of article 28, paragraph 4;

credit documentation – means the documentation that serves as basis for an agreement entered into by a bank with any other person for the provision of a credit that will include at least:

- current financial situation of the borrower and of any other person, which constitutes a personal guarantee;

- a description of methods to guarantee the full payment of indebtedness and eventually an evaluation of goods that make the object of the guarantee;

- a description of credit terms and conditions, including the amount of credit, the interest rate, the reimbursement schedule, the objective of the debtor and the purpose of the credit;

- the document with the signatures of persons authorizing credit provision on behalf of the bank;

- other documents determined by the bank;

subsidiary - means a separate subdivision, that is a legally dependent part of a bank and that conducts all or some financial activities;

financial institution - means a legal entity engaged in the business of accepting deposits or their equivalent, non-transferable by any payment instrument and using such funds either in whole or in part to make loans, or investments for its own account and risk;

remedial action - means measures to correct the infractions described in Article 38 which include:

- the establishment of a plan to increase regulatory capital;

- the establishment of committees of the board of directors to oversee credit administration, asset and liability management, internal audit and controls;
- replacement of the heads of departments;
- establishing and enforcing improved internal controls;
- other measures;

order - means an obligatory directive in implementation of this Law, issued by the National Bank to one or more financial institutions that constitute less than a class of a financial institution;

person - means an individual or legal entity, association or any group of persons acting in concert, whether or not incorporated;

regulation - means an obligatory directive in implementation of this Law, issued by the National Bank to one or more classes of financial institutions and other legal entities and individuals;

representative office - means a separate subdivision located outside the bank's headquarters and legally dependent on the bank while representing and protecting its interests;

branch - means any legal entity in which another entity or group of entities acting in concert holds:

- the equivalent of 50 percent or more of the voting shares;
- a significant interest that permits such other entity or group of entities to exercise effective control over the management and activity of subsidiary.

CHAPTER II LICENSING OF BANKS

Article 4. Licensing authority

The National Bank has the exclusive right for the issuance of licenses to banks.

Article 5. Starting (statutory) capital

(1) The minimum amount subscribed and paid in the bank's capital is established in the quantum of 100 million lei.

(2) Shares shall be paid integrally with funds.

Article 6. License application

(1) Licenses for financial activity in accordance with Article 26, shall be applied for in writing to the National Bank in such form as it is prescribed and shall be accompanied by the following:

- a) information on qualifications and experience of the administrators of the proposed financial institution, including professional history for the past ten years;
- b) information on the expected paid in capital of the proposed financial institution;
- c) a business plan for the proposed financial institution, setting out the organizational structure, the types of financial activities envisaged, and projected financial statements for the first three years etc.;
- d) information on the name, residence, and business or professional history for the past 10 years and ownership interest of each person who proposes to own the equivalent of 5 percent or more of any class of voting stock of the bank. For the purpose of this provision, the proposed ownership interest of affiliated persons shall be aggregated to determine the amount of the proposed ownership interest;

e) such additional information as shall be prescribed by regulation of the National Bank.

(2) The National Bank may request an applicant to submit additional information for its license application if, in the opinion of the National Bank, the basic information submitted is insufficient.

(3) The license concerning a branch office or subsidiary of a foreign bank shall be applied for by the foreign bank as shall be prescribed by the National Bank regulations.

Article 7. License decision

(1) Within 3 months from the date of its receipt of an application for a license that has been completed to the satisfaction of Article 6, the National Bank shall grant preliminary approval or deny the application and notify the applicant of its decision in writing. Decisions refusing a license shall include an explanation of the grounds on which the license was refused. The grounds for denial of an application may include that the information submitted is insufficient to determine whether the applicant meets the criteria in paragraph (2).

(2) The National Bank shall grant a license only if it is assured that:

- a) the bank will comply with the provisions of this Law;
- b) the qualifications, experience, and integrity of its administrators and shareholders with significant interest are appropriate for its business plan and for the financial activities that the bank will be licensed to engage in;
- c) the financial condition of the bank will be satisfactory.

(3) After preliminary approval of an application, the National Bank shall set the following requirements for the bank to receive the license:

- a) the payment of the bank initial capital that shall not be less than the capital provided by Article 5;
- b) the hiring of the specialists;
- c) signing an agreement with an auditing firm, in accordance with Article 34;
- d) the lease or purchase of operations equipment and bank premises.

(4) If a bank fails to comply within one year with the enumerated requirements, the preliminary approval of the application for a license shall become void.

(5) If the requirements described are satisfied, the National Bank shall issue the license within one month.

(6) Licenses concerning a branch offices and subsidiaries of foreign the bank shall be granted only if:

- a) the foreign bank is authorized to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located;
- b) the competent foreign authorities that supervise the financial activities at the head office of the foreign bank concerned have given their written consent to the granting of such license;
- c) the National Bank determines that the foreign bank is adequately supervised on a consolidated basis by such foreign authorities.

(7) Financial institutions carrying out some financial activities that are not defined as banks under this Law are issued licenses as shall be prescribed by the National Bank.

(8) The National Bank shall not grant the license if the capital of the establishing banks does not comply with the minimum capital provided under Art. 5 plus expenses for bank establishment. Expenses related to bank establishment shall be made within the limits provided in the business plan worked out in accordance with provisions of Article 6 paragraph (1) point c).

Article 8. Scope of license. Authorized copies of license. Fees

(1) The license shall be granted for an indefinite period of time and shall not be transferable.

(2) Banks shall be issued authorized copies of the license for each branch or another separate subdivision of the bank, where the activity based on the issued license will be carried out.

(3) The fee for license issuance shall be established at 50000 lei.

(4) The fee for issuing the authorized copy of the license, for re-issuance of license/authorized copy of the license, as well as the fee for the issuance of the duplicate of the license /of the authorized copy thereof shall be established at 450 lei.

(5) The amounts of the fees under paragraphs (3) and (4) are transferred to the state budget and shall not be refunded in case the bank/branch or another separate subdivision of the bank does not commence business or ceases operations.

Article 9. Register of banks

(1) A register of authorized banks shall be kept by the National Bank that shall record for each licensed bank the name, the head office and subsidiaries and representative offices addresses, and copies of the documents listed in Article 17. This register shall be opened for the public.

(2) A copy of the register of authorized banks shall be kept for public inspection by each separate subdivision of the National Bank.

(3) Banks whose licenses have been withdrawn shall be removed from the register through respective record.

Article 10. Withdrawal of license

(1) The National Bank may withdraw the bank license only:

- a) upon a request of the bank;
- b) following an infraction pursuant to Article 38;
- c) the license has been obtained on the basis of false information submitted by or concerning the applicant;
- d) the bank has not commenced operations within twelve months after the receipt of the license or has ceased for more than 6 months to engage in the business of receiving money deposits or other repayable funds;
- e) another bank that holds a significant ownership interest in the bank has had its license withdrawn;
- f) a reorganization or sale of substantially all the assets of the bank has occurred;
- g) the holder of a significant interest in the bank has transferred or otherwise lost such interest without the prior written consent of the National Bank;
- h) the shareholders of the bank have decided to liquidate the bank, or the bank has ceased to exist as a legally independent entity;
- i) the financial activities of the bank during its first three years of operation differ substantially from those presented in the application for a license and in the opinion of the National Bank, such deviation is not justified by changed economic circumstances;
- j) the shareholders of the bank do not observe legal provisions to ensure prudent management of the bank or do not allow performance of efficient supervision;
- k) the circumstances that served as a ground to establish special supervision or special administration of the bank have not been liquidated or, in the opinion of the National Bank, they cannot be liquidated during the application of such measures.

(1¹) The National Bank withdraws the bank's license in case of its insolvency.

(2) When a bank or its shareholders, based on the adopted decision, requests that the National Bank withdraw its license, withdrawal of license and bank liquidation is carried out according to the provisions of the Chapter VI².

(3) The license issued to a foreign bank concerning its branch offices must be withdrawn by the National Bank if the foreign bank has lost the authority to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located.

(4) The National Bank decision on license withdrawal have to include the grounds for such withdrawal. The respective bank, Deposits Guarantee Fund and Main State Tax Inspectorate must be immediately notified in writing about the license withdrawal.

Article 11. Publication and coming into force of the decision to withdraw the license

(1) The decision to withdraw a license shall be published within 7 days after it was adopted in the Official Monitor of the Republic of Moldova. An announcement on license withdrawal have to be published within the specified term in the newspapers of general distribution as well as in the newspapers wherever the bank has separate subdivisions

(2) The decision to withdraw a license shall become effective on the date of its approval.

(3) Starting on the date that the withdrawal of a license takes effect, the bank shall be prohibited from engaging in any financial activity, and shall as soon as practicable thereafter liquidate its assets, terminate accepting deposits and discharge its liabilities. During the liquidation the bank has to comply with the provisions of this Law, as before the license was withdrawn, to the extent necessary for acquiring and recovery of assets, conservation and liquidation of properties, as well as for fulfillment of the obligations and taking other measures for bank liquidation.

(4) The National Bank supervises the bank liquidation process until its completion and erasure of the bank from the State Registry of legal entities. At the request of the National Bank, the bank have to ensure the access of authorized staff to the premises and registries of the bank, to submit documents, information and reports relating to the bank liquidation.

Article 12. Prohibitions

(1) No one shall engage into financial activities, including acceptance of deposits or of equivalent of thereof without a license issued by the National Bank of Moldova.

(2) No person other than a bank shall accept household deposits or their equivalent.

(3) No one shall use the word “bank” or derivatives of the word “bank” in respect of a business, without a license issued by the National Bank, unless such usage is recognized by law or international agreement, or unless it shall be clear from the context in which this word and its derivatives are used that it does not concern financial activities.

(4) No foreign bank shall be permitted to engage directly in any financial activity in the Republic of Moldova unless the activity is undertaken through a branch office or subsidiary for which a license has been issued by the National Bank. A foreign bank may open representative offices in the Republic of Moldova only after notifying the National Bank as in accordance with the normative acts of the National Bank of Moldova. Representative offices of foreign banks shall limit their activity to acts of information, connection or representation and shall not be engaged in any activity provided in Article 26.

(5) No person shall make a misstatement of material fact or false representation or do anything to create a false appearance or engage in any manipulative device to practice in relation to taking of deposits.

CHAPTER III ORGANIZATION AND ADMINISTRATION OF BANKS

Article 13. Organization and independence of banks

(1) Banks shall be organized as joint stock companies under the Company Law.

(2) Each bank shall enjoy complete legal, operational, financial and administrative autonomy from any other person, including the National Bank, the Government and any other public administration entities, unless the law specifically otherwise provides. No person shall limit the banks' autonomy, influence any administrator of a bank in the discharge of his duties or to interfere in the activities of any bank, except in the execution of a specific authority or duty under the law.

(3) Each bank shall enjoy freedom of contract, and the right to own and dispose of movable and immovable property, and to be a party to legal proceedings.

(4) Banks may open branches and representative offices in the Republic of Moldova and other states only upon the preliminary approval of the National Bank, as provided in normative acts adopted by the National Bank.

Article 13¹. Bank branch and representative offices

(1) The bank branch carries out, on its own behalf, all or some of the financial activities provided by the license issued to the bank and acts within the powers granted by the bank.

(2) The bank representative office is not entitled to conduct financial and other activities, excepting the activities related to information, representation, and protection of bank interests.

(3) The name of the bank branch or representative office must specify the fact that it is a branch or representative office of a bank that has opened it.

(4) The branch or representative office is opened/ closed through the decision of the bank's management body entitled with such right according to the bank's statute.

(5) Registration of a branch or representative office at the state registration authority is made by submission of the National Bank notice on the approval of opening such a branch or representative office.

(6) A bank branch can have internal structural subdivisions (agencies, exchange offices) located outside bank's headquarters and having not separate bookkeeping (hereinafter referred to as the *auxiliary offices*). The name of the auxiliary office have to contain a reference to its type and the affiliation to the specific branch within which it was opened.

(7) The agency can engage in activities (including those of an exchange office) determined by the bank according to its list of permitted activities, as established by the National Bank normative acts. The exchange office conducts its activities according to the provisions set forth in the Law on Foreign Exchange Regulation, No.62-XVI, of March 21, 2008.

(8) The auxiliary office is opened/ closed based on the decision of the bank's management body that is entitled with such right according to the bank's statute. The auxiliary office must be indicated in the regulation of the bank's branch.

(9) In case of taking the decision on closure of a branch (auxiliary office), the bank (branch) must notify, within 10 days, the clients served by that respective branch (respective auxiliary office) and take measures to ensure the fulfillment of its obligations towards them.

(10) The bank shall notify the National Bank on closure of its branches or representative offices, on opening and closing of its auxiliary office under the conditions set forth in the National Bank normative acts.

Article 14. Regulatory capital

(1) The starting amount that banks must maintain as regulatory capital shall not be lower than the quantum of the starting capital set out under Art. 5 (1).

(2) Shares shall be paid integrally with funds.

Article 15. Restrictions on ownership and holdings

(1) The transfer of a holding in the capital of a bank is performed exclusively with the preliminary written permission of the National Bank, subject to absolute nullity, as follows:

a) by way of transactions and other legal acts, if following such a transfer any person or any persons acting jointly will hold, directly or indirectly, a significant holding in the capital of this bank, as well as in the case where following the rise of such a holding, the limits of 25 per cent, 33 per cent and 50 per cent will be reached or exceeded.

b) under irrevocable judgments or under transactions or other legal acts performed following these judgments;

c) by way of transactions or other legal acts, if the transfer is performed between the residents of off-shore countries and/or zones, as well as and/or groups of persons acting jointly,

that include a person from off-shore countries and/or zones, or between the resident of an off-shore country and/or zone and other persons, irrespective of the holding size representing the object of the transaction.

The decision on such a preliminary permission is issued under the art. 7, paragraph (2).

The exercise of the voting right held by persons that have not obtained the National Bank preliminary permission or have obtained holdings that led to exceeding the maximum limits provide for in paragraph (2) is suspended from the date of its approval by the National Bank, for the holding size held without the preliminary permission of the National Bank. These persons are obliged, within 3 months, to obtain the National Bank permission or to sell their shares for which the voting is suspended to a person that has obtained the National Bank preliminary permission. After the expiry of this time-limit, if the shares have not been sold or the National Bank permission has not been obtained, the National Bank orders to the bank to annul these shares, to issue new shares in the same number and of the same class and sell them, and to transfer the amount obtained from sale to the initial holder, retaining the expenses related to sale. In case of a judicial dispute, the National Bank orders to the bank to annul the shares and to execute the above mentioned measures, only after the pronouncement of an irrevocable judgment.

(2) The amount of all equity interests in a bank, owned directly or indirectly by resident persons of off-shore zones and / or countries, as well as / or by groups of persons acting in concert, within which there is a person from mentioned zones and / or countries, shall not exceed the significant interest.

(3) No bank shall, alone or in concert with one or more other persons, without prior written authorization of the National Bank, directly or indirectly:

a) hold an equity interest in a legal entity that is engaged in other than financial activities that either represents a significant interest or exceeds as to its net current value the equivalent of 15 percent of the bank's regulatory capital;

b) or permit the aggregate net current value of all such equity interests to exceed the equivalent of 50 percent of the bank's regulatory capital.

(4) No such authorization from the National Bank shall be required for equity interests except equity interest in capital of banks:

a) that have been acquired by a bank in lieu of repayment of credit granted by the bank, in which case the bank may entirely dispose of such equity interests within one year or within such longer time period as the National Bank in exceptional circumstances may decide;

b) held by a bank as an agent.

Article 16. Reorganizations of banks

The reorganization or sale of substantially all the assets of a bank shall require the prior written authorization of the National Bank. Determinations shall be based upon the criteria described in Article 7(2). The bank or banks established following merging or decomposition shall start the activity only if having received the authorization of the National Bank. Reorganizations that would be inconsistent with the provisions of Article 27 shall not be authorized.

Article 17. Charter and by-laws

(1) Each bank shall have a charter that shall specify its corporate name and address, its purposes, Jurisdiction and authority of its Board of Directors, as well as the amount of its capital, the classes, numbers and nominal values of its shares, and the voting rights attaching to its shares. No amendment of the charter of a bank shall take effect without the prior written consent of the National Bank.

(2) Each bank shall be governed by internal by-laws, approved by its Board of Directors, which in compliance with its charter shall establish:

a) the structural organization and functions of the bank, including administration and control units and their jurisdiction;

- b) sub-units functions, supervisory positions of the employees;
- c) the limits of the authority of the administrators and other employees of the bank to engage in financial activities in the name and for the account of the bank;
- d) the functions of the Audit Committee and other permanent committees.

(3) Each bank shall submit to the National Bank a duly certified copy of its registered charter, its by laws, and a list of the officials of the bank who are authorized to act on its behalf, together with their specimen signatures and a description of the limits of their authority.

Article 18. Administrative and control structure of banks

(1) Each bank shall be managed by the general meeting of shareholders, the Board of Directors, the executive body and the Audit Committee. The Board of Directors is the administrative authority of the bank that shall carry out supervision functions and shall establish and ensure the bank policy operation. Attributions of the Board of Directors shall be specified in the charter and internal regulations of the bank.

(2) Each bank shall be overseen by an Audit Committee, as responsible for control of the bank's activity.

Article 19. Board of Directors

(1) The Board of Directors of a bank shall have an uneven number of not less than three members. Board members shall be appointed by the general meeting of shareholders of the bank for a period of not more than four years. Board members may be reappointed for subsequent periods of four years. The general meeting of shareholders of a bank may establish remuneration for Board membership. The majority of Board members shall be persons not affiliated to the bank, except for affiliation determined by membership in bank Board.

(2) A person shall not be eligible to become a member of the Board of Directors of a bank, or shall by decision of the general meeting of shareholders of the bank be relieved of his membership on the Board of Directors of the bank, in the event that:

- a) he is or would be a member of the Board of Directors of two or more other banks of the Republic of Moldova;
- b) he has been deprived of the right to sit on the Board of Directors;
- c) he serves, or he served during the preceding twelve months' period on the Administrative Council of the National Bank;
- d) he has been subject to an insolvency proceeding and not discharged from payment of past debts.

(3) The Board of Directors of a bank and its members cannot delegate their responsibilities to others.

Article 20. Audit Committee

(1) The Audit Committee shall have an uneven number of not less than of three members appointed by the general meeting of shareholders of the bank for a period of 4 years. Members of the board of Directors shall not concurrently serve on the Audit Committee. The majority of members of the Audit Committee shall not be persons employed at the bank.

(2) The Audit Committee shall:

a) establish appropriate accounting procedures and accounting controls for the bank, according to the National Bank regulations, supervise compliance with such procedures, and audit the bank's accounts and records;

b) monitor compliance with the laws and regulations applicable to the bank and report to the Board of Directors thereon;

c) deliver advise on any matters submitted to it by the Board of Directors or that it wishes to address.

(3) The Audit Committee shall meet ordinary once per quarter and extraordinarily when convened by the Board of Directors or by two of its members. Decisions shall be taken by a majority of the members that have no right to abstain

Article 21. Requirements to administrators

All persons elected or appointed as administrators of a bank must meet the criteria established by National Bank regarding qualifications, experience, reputation in business circles, must be free of any legal proceedings and evidence of financial and administrative problems at previous work, financial fraud, tax avoidance etc. Only individuals may be elected as administrators of a bank, except members of the Audit Commission whose powers and authorities may be delegated to the audit company, is such company does not conduct the audit of the bank. Such persons must receive the confirmation of the National Bank prior starting to act as administrators. The decision on such confirmation shall be issued under provisions of Art. 7 (2).

Article 22. Banking secrecy and fiduciary obligations

(1) Banking secrecy is any information about the person, goods, activity, business, personal or business relations of the bank, customers' accounts, (balances, turnovers, performed operations), the customers transactions, and other information about the customers, which became known to the bank.

(2) Under this article, a bank customer is considered any person benefiting or has benefited from the services of a bank or person with whom the bank has negotiated a transaction, even if that transaction was not completed.

(3) Bank managers and clerks, persons acting on behalf of the bank and other persons who, by virtue of execution of the job duties, have gained access to the information provided in paragraph 1 are obligated to keep the banking secrecy; the information shall be used only for job purposes. This obligation shall subsist also after the termination of the above-mentioned persons' activity or during the suspension of activity.

(4) Information provision constituting bank secrecy, including to the public authorities empowered by law to request information from individuals and legal entities, is done in strict accordance with this article.

(5) Information that is considered banking secrecy shall be provided by the bank, to the extent that providing such information is justified by the purpose for which is requested in the following cases:

- a) At the request of the customer's bank or its representative;
- b) In case of death of the bank customer, at the request of his heir, attaching the heir certificate, and at the request of the notary that started the succession procedure, attaching copy of death certificate of the bank customer;
- c) At the request of the criminal prosecution, authorized by the investigating judge, regarding the concrete criminal case;
- d) With the judge authorization the concrete criminal case;
- e) At the request of the court, to resolve a pending case;
- f) At the request of the customs authority, in respect of the person subject to customs supervision, in accordance with the provisions of the Customs Code;
- g) At the request of the Court of Accounts, regarding the interviewed person, in accordance with the special law governing the Court of Accounts;
- h) At the request of the Information and Security Service, in order to exercise the duties related to state security assurance;
- i) At the request of the Center for Combating Economic Crimes and Corruption, regarding the person who falls under the legislation on preventing and combating money laundering and terrorist financing;

j) At the request of the National Commission of Financial Market, in order to exercise the duties related to the non-banking financial market;

k) At the request of the enforcement body, under and within the limits stipulated by the enforceable document;

l) When the bank has a legitimate interest.

(6) Requests for information provision constituting bank secrecy, by the authorities mentioned in paragraph (5), must contain: the legal basis of the request, the identity of the person to whom the requested confidential information is referred, the category of information requested and the purpose for which is sought. The request submitted must be signed by an official empowered person and must be stamped by the given authority.

(7) The following cases are not considered breach of the obligation of keeping the banking secrecy:

a) Providing the information by the National Bank needed to perform its duties;

b) Providing the information and data compiled so that the identity and information on each customer's activity can not be identified;

c) Obligatorily providing the information to the tax enforcement on opening, modification and closing of bank accounts in cases with reference to the categories of taxpayers under the law;

d) Providing fiscal authorities of the information required for the opening, modification and closing of bank accounts in cases with reference to the categories of taxpayers under the law;

e) Providing the information to the audit of the bank, within the limits required by the exercise of audit activity;

f) Providing the information to the credit history bureaus on granted loans, in accordance with the law;

g) Providing the information to the Centre for Combating Economic Crimes and Corruption on any suspicious activity or transaction, in accordance with the law on preventing and combating money laundering and terrorist financing;

(8) The persons and bodies entitled to request and receive information constituting bank secrecy are required to keep such information confidential and may use them solely for the purpose for which they have been requested or provided by law and are not obliged to provide or disclose to a third person, except cases of execution of the obligations stipulated by law.

(9) It is prohibited to provide by the bank the information on the clients of another bank, even if the first and last name/ name are listed in the documents and contracts of the client or contain within its operations.

(10) The bank organizes its activities so that the administrators, clerks, and persons acting on its behalf shall not be put in the situation when their obligations to a client conflict with the obligations to another client or when their own interests conflict with their obligations to the client.

Article 23. Preventing and combating money laundering and terrorism financing

(1) No bank shall conceal, convert, or transfer cash or other valuables, knowing that it is derived from criminal activity, for the purpose of concealing its illicit origin or of assisting any person who is involved in such activity to evade the legal consequences of his action.

(2) It is considered that the bank is knowledgeable of the illicit origin of the cash or other valuables if it is inferred from objective factual circumstances.

(3) The bank takes measures to identify its clients and other persons with whom the bank enters into business relationships, including its shareholders and effective beneficiaries, precautionary measures, and safekeeping of data related to such measures, as well as reports to the competent authorities on the suspicious activities or transactions (operations) and other information subject to reporting according to the Law on Preventing and Combating Money Laundering and Terrorism Financing and the regulations adopted to implement it. Banks shall inform the competent authorities of the evidence that cash or other valuables are derived from

criminal activity, as prescribed by the law. Providing such information is not considered a violation of Article 22.

(4) The bank requests, while its clients and other persons with whom it enters in business relationships must submit documents and information required for their identification. In case of failure to submit or submitting false (inaccurate) documents and information, the bank refuses to open an account, carry out a transaction (operation) or establish business relationships. In case of reasonable suspicion of deliberate presentation of false (inaccurate) documents and information for the purpose of misleading, the bank reports such circumstances to the competent authority.

(5) In order to identify a client and other person with whom the bank enters into business relationships, as well as to ensure compliance with the internal control procedures, including those related to the identification of suspicious activities and transactions (operations), the bank may request, through a reasoned request, the necessary information from public authorities, banks and other legal entities, and may take any other measures in order to obtain such information from other sources. Public authorities, banks and other legal entities are obliged to submit the requested information as soon as possible. Submitting such information is not considered an infringement of the provisions on the banking, commercial or other secret protected by law.

Article 24. Conflicts of interest

(1) An administrator of a bank who is a party to a material contract or a proposed material contract with the bank or is an administrator of, or has a material interest in or a material relation to any person who is a party to a material contract or a proposed material contract with the bank, shall disclose in writing to the bank about its material interest when the contract comes or ought to come to the attention of the administrator.

(2) Any administrator shall submit to the Board of Directors not less than annually a notice in writing that shall be a sufficient declaration of conflict of interest. Sufficient declaration of conflict of interest means providing the names and addresses of the administrator's associates, full particulars of activity or family interest that such person has, and stating that the person is to be regarded as interested in any material contract with a person named in the notice.

(3) An administrator who has a material interest to a contract shall leave any meeting at which the contract is discussed. At the same time his presence at the meeting is considered for purposes of constituting a quorum and when voting as refrained. The chairman of the meeting has the decisive vote if there is a parity.

(4) For the purposes of paragraphs 1 and 2 an interest shall be material if it is material with reference to the wealth, business or family (first and second degree of consanguinity) interests of the person having the interest. A person has a material interest in any company if the person owns, directly or indirectly, a significant interest in the company, or is an administrator of the company, and any partnership if a the person is a partner.

(5) Where an administrator fails to disclose a material conflict of interest:

a) a court may, on the application of the bank, one or more shareholders, or the National Bank set aside the contract on such terms as it thinks fit;

b) the National Bank may, by written order, suspend the administrator from office for any period not exceeding one year, or remove the administrator from office permanently.

(6) Independently of the fiduciary obligation under Article 22, paragraph (10), administrators of banks have a fiduciary duty to the bank that they serve and to the bank's customers to place the bank's interests and its customers' interests before their own pecuniary interest.

CHAPTER IV OPERATIONS

Article 25. Prudential requirements

(1) Financial institutions shall conduct their administration and operations in accordance with sound administrative and accounting procedures, the requirements of the law, and the regulations issued by the National Bank.

(2) Financial institutions shall maintain adequate capital and sufficient resources, and, with due regard to the nature of their business, shall ensure that their assets are diversified as to risk of loss.

Article 26. Financial activities allowed to banks

(1) Banks may conduct the following activities within the issued authorization:

- a) receiving deposits (in the form of demand or time deposits etc.) bearing interest or not;
- b) extending credit (consumer and mortgage credit, factoring, with or without recourse, financing of commercial transactions, issue of warranties and collateral etc.);
- c) borrowing funds, buying and selling for their own account or for account of customers (excluding underwriting) of:
 - money market instruments (checks, bills of exchange and certificate of deposit etc.);
 - futures and options relating to debt securities or interest rates;
 - interest rate instruments;
 - debt securities;
- d) providing payment and collection services;
- e) issuing and administering means of payment (payment cards, travellers' checks and bankers' drafts etc.);
- f) money (including foreign currency) broking;
- g) financial leasing;
- h) providing credit reference services;
- i) providing services as a financial agent or consultant not including services described in subparagraphs (a) and (b);
- j) dealing in foreign currencies, including contracts for the future sale of foreign currencies;
- k) providing trust services (investment and administration of funds received in trust), safekeeping and administration of securities and other valuables etc.;
- l) providing services as an investment portfolio manager or investment adviser;
- m) underwriting and distribution of debt and equity securities and dealing in equity securities;
- n) such other financial activities as approved by the National Bank.

(3) No bank shall engage in financial activities that exceed those specifically authorized by its license.

Article 27. Prohibited anticompetitive transactions and practices

(1) Financial institutions shall refrain from:

- a) entering into transactions or operations that would provide them, alone or together with others, a position of dominance on the money, financial and foreign exchange markets;
- b) engaging in manipulative practices that could result in an unfair advantage for themselves and third parties.

(2) No financial institution shall require any person to contract to receive any financial service or any goods or other service from an affiliate as a condition of being permitted to contract with the financial institution to receive any financial service.

(3) No bank and no financial institution affiliate of a bank shall:

- a) extend credit beyond limits determined by the National Bank to a person or underwrite or place tangible assets or arrange financing from third parties to that person to enable the person to repay his obligation to the affiliate;

b) underwrite or place tangible assets of a person and extend credit to that person to enable him to pay the principal, interest or dividend on such securities;

c) underwrite, place, or distribute securities and within 60 days of the initial sale, purchase or recommend the purchase of such securities in the capacity of asset manager or investment advisor.

(4) No bank shall purchase from an affiliate of the bank:

a) assets of that affiliate;

b) securities to be underwritten, placed or distributed by that affiliate or that have been sounder written, placed or distributed within the past year.

(5) No bank shall provide credit enhancement for or extend credit to facilitate the purchase of securities underwritten, placed or distributed by an affiliate of the bank.

Article 28. Prudential measures

(1) Banks shall observe the following maximum limits as prescribed by the National Bank:

a) the maximum ratios and exposures to be maintained by a bank concerning its assets, risk weighted assets, and off-balance sheet items and various categories of capital and reserves;

b) the maximum aggregate amount of credits, expressed as a percentage of its regulatory capital, that a bank shall be permitted to extend to any single person or group of interrelated persons;

c) the maximum aggregate amount of credits, expressed as a percentage of the aggregate amount of all its credits, that a bank shall be permitted to have committed or outstanding to or for the benefit of the ten largest borrowers (including groups of interrelated persons).

(2) According to the regulations of the National Bank, banks shall observe the following requirements concerning:

a) the minimum amount of liquid resources or specific categories of such resources in relation to the value or change in value of assets (including guarantees and collateral received) or specific categories thereof, or in relation to the amount or change in amount of liabilities or specific categories of liabilities;

b) the maximum aggregate amount of real estate investments, or specific categories thereof;

c) classification and evaluation of assets and specific risk provisions to be made on the basis of such classification and evaluation against losses on loans and the time when earnings on such loans may no longer be accounted for as income except as received in cash;

d) the types or forms of credits and investments made;

e) matching as to maturity and interest in respect of assets and liabilities;

f) unhedged positions in foreign currencies, precious metals or precious stones, exceeding a specified size.

g) transparency of the ownership structure and of control over the bank by obtaining, accumulating, storing and updating information about the shareholders (actual beneficiaries);

h) outsourcing of materially important activities;

i) internal control systems.

(3) Non compliance with the requirements described in paragraphs (1) and (2) will result into use of the provisions of Article 38.

(4) A bank shall make no capital distribution if in the opinion of the National Bank, this will determine the non-compliance with the requirements set forth in Art.7 paragraph (2).

(5) A bank shall not extend credits under the warranty of own issued stocks.

(6) No financial institution may engage directly in enterprise activity, or services other than financial services.

Article 28¹ Outsourcing

(1) Outsourcing is an employment on a contractual basis of a legal entity (hereinafter referred to as the *contractor*) in view of carrying out/conducting operations that are usually carried out/conducted by the bank.

(2) The Bank is entitled to outsource the materially important activities after receiving the written permission from the National Bank. Materially important activities are activities subject to licensing and authorization, any other activities or operations of such importance, so that any difficulty or failure to carry out/conduct them can result in bank's inability to continue its financial activities and/or comply with the provisions set forth in laws and other regulations.

(3) Outsourcing of materially important activities provided by the art. 26, as well as of the licensed activities can be made only to a bank from the Republic of Moldova or to another resident legal entity holding a valid license for such activity.

(4) Subcontracting the outsourced materially important activities (chain outsourcing) is not allowed.

(5) The bank is responsible for the proper management of risks related to the outsourced activities/operations.

(6) In case of outsourcing, the bank must meet the following minimum conditions:

a) will have appropriate internal policies and procedures on evaluation, management and control of outsourced activities/operations, while the internal control system, internal reporting system and internal audit functions will be adjusted to the specificity of such activities/operations;

b) outsourcing will not result in:

- delegation of the bank's management bodies responsibility to the contractor;
- reduction of bank's capacity to fulfill its obligations or infringement in any other way of the legal interests of its clients, to fulfill the tasks set forth in the bank's statute, regulations or long and medium term development strategies;

- restriction, prevention or incapacity of exercising the National Bank duties related to licensing, supervision and regulation, as well as the duties of the authorized control bodies;

c) will take measures to ensure the continuity of the materially important activities in case of exceptional situations, as well as to comply with this Law when dealing with the contractor;

d) will ensure, annually or at the National Bank request, the external audit of outsourced activities/operations by an international audit company accepted by the National Bank, in accordance with the audit requirements established by the latter;

e) will report to the National Bank without delay about any incident or change in risk, including the change of the contractor that might have a significant impact on the capacity of bank's efficient management, stability, performance and continuity.

(7) Application for receiving the permission set forth in paragraph (2) must be submitted at least 60 days before the date of the outsourcing contract completion.

(8) The National Bank issues the permission set forth in paragraph (2) if the requirements set in this article and the bylaws adopted for enforcing the law are met, and/or, where applicable, if the National Bank is convinced in bank's possibilities to comply with the outsourcing requirements. If necessary, the National Bank may consult public authorities and other competent authorities.

(9) In case of outsourcing materially important activities, the National Bank may impose certain conditions taking into account factors such as: size of the bank, nature and complexity of the activity to be outsourced, contractor's characteristics and market position, term of the contract, conflicts of interest that could be generated by the outsourcing.

(10) The National Bank have the right to prescribe the termination of the outsourcing contract if it finds that:

a) the bank does not carry out continuous monitoring of the outsourced activities/operations or management of related risks or does it irregularly and inadequately;

b) the activity of the contractor of outsourced activities/operations has significant deficiencies that threaten or may threaten the bank's ability to meet its obligations.

Article 29. Records of financial institutions

(1) A financial institution shall keep at its head office and/or to provide access from the headquarters to the following registers and documents in electronic or hard format:

- a) its charter and by-laws and all amendments thereto;
- b) a register of its shareholders, including the number of shares registered in the name of each shareholder, as in accordance with the Law on Securities Market;
- c) minutes of meetings and resolutions of the Board of Directors;
- d) minutes of meetings and resolutions of the shareholders;
- e) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position;
- f) records showing, for each customer of the financial institution, on a daily basis, and the balance owing to or by that customer;
- g) such other records as are required by this Law and regulations of the National Bank.

(2) In case of keeping a register or document in electronic format, the financial institution must, at the request of the authorized person, print out a hard copy of such register or document.

Article 30. Public notification

A financial institution shall regularly publish truthful information about its financial activity, and terms and conditions associated with the deposits made and credits extended, including the rate of interest, in accordance with regulations issued by the National Bank.

Article 31. Transactions with employees of the bank and with related persons

(1) Banks shall not extend credit to or for the benefit of a person who is related to the bank, if such credit would be extended on less favorable terms and conditions, or not at all, to the persons who are not so related to the bank. For the purposes of this paragraph, persons who are related to a bank shall include: any administrator of the bank; any person who is related to such administrator by marriage or consanguinity of the second degree; shareholders having substantial interest; affiliated persons. Notwithstanding the foregoing, no bank shall extend credit to or for the benefit of a person so related to the bank if as a result thereof the aggregate amount of the credits extended by the bank to such persons would exceed an amount prescribed by regulation by the National Bank.

(2) Credit extended by any bank to any related financial institution shall be subject to such conditions or restrictions as prescribed by the National Bank. For the purposes of this paragraph, a related financial institution shall include: any person or number of group of such persons acting in concert, that has a direct or indirect interest in the bank extending the credit; any entity in which the bank holds a significant interest.

(3) A bank shall not extend credit to any of its employees in excess of the limits established by the National Bank.

Article 32. Granting credits

(1) The banks shall record all credit and warranty operations of the banks in contractual documents that will clearly define the established terms and conditions of relevant transactions.

(2) Banks shall grant credits only if assured that the applicants are solvable enough as to reimburse credits in due time. For the purpose of this paragraph, banks shall request the applicants to guarantee credits under conditions established by bank credit regulations.

CHAPTER V

ACCOUNTS AND STATEMENTS, AUDIT, REPORTING AND INSPECTION

Article 33. Accounts and financial statements

(1) Financial institutions shall maintain at all times accounts and records and prepare periodic financial statements to reflect their operations and financial condition in accordance with consistently maintained sound accounting practices.

(2) Accounts and financial statements shall be in accordance with accounting standards as established by the National Bank respecting the preparation of the financial institution's accounts, including creation of appropriate provisions for bad and doubtful assets and timing of income receipts.

(3) The accounts, records and financial institution's statements shall also reflect the operations and financial condition of its subsidiaries and branch offices, both on an individual and on a consolidated basis.

Article 34. External audit

(1) Banks shall each appoint an independent external auditor, accepted by the National Bank, who shall:

a) assist it in maintaining proper accounts and records in the manner established by the National Bank;

b) prepare an annual report together with an opinion as to whether the financial statements present a full and fair view of the financial condition in accordance with the provisions of this Law;

c) review the adequacy of internal audit and control practices and procedures and make recommendations for redemption;

d) inform the National Bank about any fraudulent act by an employee of the bank or its branch office and any irregularity or deficiency in its administration or operations that should be expected to result in a material loss for the bank or its branch office.

(2) For banks whose assets do not exceed the amount established by the National Bank, the audit functions may be performed by an accounting expert or a certified public accountant from the bank, as determined by the National Bank.

Article 35. Publication of balance sheet, auditor's opinion, annual report

Each bank shall, within four months from the end of its financial year, publish in the newspapers of general circulation, as well as in the newspapers wherever the bank has separate subdivisions, its balance sheet and external auditor's opinion, and publish its annual report and provide copies to the public without charge.

Article 36. Examinations of branches

(1) Provisions of Articles 34 and 35 may, by regulations of the National Bank, be made applicable to any branch office of a bank as if such branch office were a subsidiary of that bank. Statutory and regulatory provisions requiring financial statements may be applicable for the branch office too.

(2) With respect to a branch office of a foreign bank, an audit committee or other representative organ of the foreign bank may function as the Audit Committee of the branch office.

Article 37. Reports and inspection

(1) Each bank shall prepare and submit to the National Bank according to its regulations, reports concerning its administration and operations, liquidity, solvency, and profitability, and those of its subsidiaries, for an assessment of the financial condition of the bank and each of its subsidiaries on an individual and a consolidated basis.

(2) Every bank and each of its branches and subsidiaries, including those abroad, shall be subject to inspections by inspectors of the National Bank or by auditors appointed by the National Bank. The inspection of the bank that is a branch or subsidiary of a foreign bank or

has a significant interest in the foreign bank is made by the auditors charged with supervision of financial activities in that country.

(3) Each bank and each of its subsidiaries shall admit and cooperate fully with the inspectors of the National Bank and the auditors appointed by the National Bank.

(4) In their inspections of banks and their subsidiaries, the National Bank inspectors and its auditors may:

a) examine the accounts, books and other records;

b) require administrators, employees and agents of the bank or subsidiary to provide all such information on any matter relating to its administration and operations.

(5) Fiscal authorities, the Centre for Economic Crime and Corruption Prevention and other authorities authorized with control functions, shall be admitted by financial institutions and shall conduct such controls and obtain information and records or copies of thereof deemed for application of vested powers as it is established within their competence and provided in the legislation on the activity of these authorities and the provisions of this Law.

Chapter V¹ **SPECIAL SUPERVISION**

Article 37¹. Establishing and implementing the special supervision.

(1) The National Bank may establish a special supervision procedure concerning a bank if finds an infringement of the provisions set forth in Art. 38, paragraph (1) or a precarious financial situation of the bank.

(2) The special supervision shall be carried out by a commission created for this purpose, consisting of up to 5 employees of the National Bank, one of whom shall act as chairman of the commission and one as a deputy chairman.

(3) The provisions of this chapter shall not affect the duties and powers of the National Bank to apply before or during the special supervision, other measures and sanctions provided by this Law, including the establishing of special administration or license withdrawal and forced liquidation.

Article 37². Main powers of the special supervision commission

(1) The powers of the special supervision commission shall be established by the National Bank and shall mainly include:

a) analysis of the bank's financial situation;

b) verifying the existence of the grounds provided by Art. 37⁴, paragraph (2) and Art. 38, paragraph (3);

c) monitoring the way the bank's board, executive body and managers are acting in order to establish and apply the measures necessary to remedy the violations and deficiencies or, if necessary, the recommendations formulated by the commission or measures charged by the National Bank in accordance with the present Law;

d) formulating recommendations to the bank on:

- suspension or repeal of certain decisions of the bank's management bodies, which are contrary to the requirements of prudence or leading to the deterioration of its financial situation;

- amending/ supplementing the bank management framework, strategies, processes and mechanisms implemented by the bank;

- limitation and/or suspension of some bank activities and operations for a certain period of time;

- any other measures deemed necessary to remedy the violations and/or the bank situation;

e) formulating recommendations to the National Bank on implementation of certain measures or application of sanctions provided by the law if the bank's board, executive body or

managers do not comply with the measures recommended by the commission or these did not give the expected results.

(2) The special supervision commission does not substitute the bank managers regarding the current management of the activity and the competence to undertake commitments on behalf of the bank. Responsibility for the legality, validity, accuracy, and timeliness of the bank operations and documents lies exclusively with the bank managers and/or persons who prepare and sign such documents, according to their powers and competencies.

(3) The members of the special supervision commission shall have access to all information, documents, and registers of the bank and are obliged to keep the professional secret about bank operations.

(4) The bank management bodies, employees and other persons shall not obstruct the members of the special supervision commission in fulfilling their duties.

Article 37³ Special supervision reports

(1) The special supervision commission shall submit periodically to the National Bank reports and recommendations on bank situation. The recommendations shall meet the following criteria:

a) shall include proposals on the most rapid and cost efficient way to remedy the violations and deficiencies, as needed, on prevention of the conditions leading to the grounds provided by Art. 37⁴ paragraph (2), letters b)-f) regarding the establishing of special administration or conclusions on the necessity to liquidate the bank;

b) shall provide for minimization of the risk for bank depositors and other clients, as well as for financial stability.

(2) Depending on the proposals and conclusions contained in the special supervision commission reports, the National Bank shall decide on stopping or continuing the special supervision for a period not exceeding 3 months from the date of its establishment.

(3) Whether serious deficiencies are still found within the bank activities, the National Bank may decide, depending on the case, to apply the special administration measures to the bank or other measures provided by the law, including the withdrawal of bank license and its forced liquidation.

„Chapter V² SPECIAL ADMINISTRATION

Article 37⁴. Definition and establishing the special administration

(1) Special administration means an administration regime established for a certain period of time with regard to a bank and envisaging the implementation of a set of administrative, financial, legal, and organizational measures with the scope of determining the optimal conditions for preserving the value of assets, elimination of deficiencies in bank administration and in administration of its properties, collection of debts, establishing the possibilities to remedy the financial situation, including restructuring or liquidation of the bank.

(2) The National Bank may establish special administration in regard to a bank if:

a) establishing the special supervision measure did not have any results;

b) the amount of bank's capital is below the amount of regulatory capital set forth in the National Bank regulations, or its adequacy ratio is by at least 1/3 below the ratio established by the respective regulations;

c) the bank liquidity ratio is by at least 1/4 less as compared to the ratio established by the National Bank regulations;

d) the bank fails to fulfill or is unable to fulfill the remedial measures imposed by the National Bank;

e) the bank systematically obstructs the exercising of banking supervision duties by concealing accounts, assets, registers, reports, documents and information or by unfounded refusal to submit them to the authorized staff of the National Bank;

f) the bank's management bodies are not able to ensure the bank activity according to the legislation, especially in cases of conflicts that disorganize the bank activity, arrest, suspending the managers due to a criminal case or convicting them for the committed crime;

g) it is requested by the bank on the basis of decision taken by the board or general meeting of bank's shareholders.

(3) The special administration shall be established for a term of up to 9 months. The term of special administration may be extended only once for a period not exceeding three months..

(4) The decision on establishing/extending the term of special administration shall contain the grounds of establishing/ extending the term, as well as the term of special administration, data about the special administrator and, as applicable, the restrictions or conditions related to the bank's activity. The respective bank shall be immediately notified in writing on the taken decision.

(5) The announcement on establishing the special administration shall be published by the National Bank in the Official Monitor of the Republic of Moldova within 7 days, except for the case provided by paragraph (2), letter f).

Article 37⁵. Special administrator

(1) Special administration shall be exercised by a special administrator appointed by the National Bank by the decision on establishing the special administration.

(2) As special administrator may be appointed any individual including an employee of the National Bank, who meets the conditions set forth in Art. 38². Based on founded reasons, the National Bank may decide on replacement of the special administrator.

(3) In exercising its powers and rights, the special administrator is liable only to the National Bank, which is authorized to issue mandatory instructions and recommendations related to its activities.

(4) If the special administrator does not comply with this law or does not fulfill its duties, the National Bank will dismiss him/her and appoint another person.

Article 37⁶. The effects of establishing special administration

(1) From the date of his/her appointment, the special administrator shall take the administration and control over the bank and has unlimited access to bank assets, premises, registers, documents and information.

(2) For the duration of special administration, the rights and obligations of the bank shareholders, board, executive body, and managers shall be suspended and exercised by the special administrator, if this chapter does not provide otherwise. the special administrator can delegate some of its duties to other persons including bank managers and employees whose duties were suspended, if the National Bank does not stipulate otherwise.

(3) Members of the bank board, executive body, and bank managers cannot receive payments and other benefits as a result of suspending their powers or ceasing of their membership, except for the cases provided by the labor law.

(4) For the duration of special administration, the powers of the general meeting of shareholders of the bank shall be limited to decisions that do not contradict with the scopes of establishing the special administration and shall not impede exercising of powers and rights of the special administrator.

(5) The provisions regarding the obligation to convene the general meeting at the request of the shareholders of the bank are not applicable for the duration of special administration.

(6) Legal acts made in the name and on behalf of the bank in violation of the provisions set forth in paragraph (2)-(5) are invalid if they are not approved by or coordinated with the special administrator.

(7) The special administrator shall take measures in order to ensure safety of bank assets, registers, documents and information, and may:

a) change the rules of access to the bank premises;

b) withdraw the right of access and/or change the passwords for access to the information system resources of the bank, including to any information carriers and to grant access to these to a restricted number of employees;

c) issue a new type of permits for access to bank premises for the authorized staff and to control access of other persons to these premises.

(8) The special administrator shall immediately notify the separate subdivisions of the bank, correspondent banks, state registration body, holders of public registers, central depository of securities and the registrar that keeps the register of the holders of bank securities, and if necessary, other persons about the institution of special administration, suspension of duties of certain persons and granting them to other persons.

(9) The bank managers and employees must assist the special administrator in its activity. At the request of special administrator, any person holding registers, documents, information, seals, stamps and goods of the bank or controlling them, shall make them available to special administrator or persons appointed by it. At the request of the special administrator, the bank managers shall provide explanations and reports on operations conducted by the bank.

Article 37⁷. Main duties and rights of the special administrator.

(1) The special administrator shall have full powers to lead, manage, and control the bank, including:

a) analyzing and assessing the bank activity and financial situation;

b) determining the most effective and quickest way to liquidate of the circumstances set out in Art.37⁴ paragraph (2), letters b)-f), reducing bank losses and minimizing risks for the interests of depositors and other creditors;

c) participating in elaboration, organization and implementation of remedial measures and controls their fulfillment;

d) controlling the use of the bank's property;

e) taking measures regarding the collection of debts due to the bank and the recovery of its properties possessed by third parties, to bring proceedings in court on behalf of and in the interests of the bank;

f) submitting to the National Bank information, explanations and reports;

g) exercising other necessary duties for the purpose of special administration.

(2) The special administrator shall have the right to:

a) hire specialists, experts and professional consultants;

b) convene and conduct general meeting of shareholders of the bank;

c) repeal or suspend the decisions of the management bodies; dismiss or transfer the executive members and bank employees to other functions, to revise their responsibilities and to change the size of labor remuneration, with due respect for the labor legislation;

d) appoint its representatives to act in the subdivisions of the bank, in executive bodies of legal entities found in the majority ownership of the bank;

e) suspend payment of dividends and other forms of distribution of bank's capital;

f) establish bank's creditors, the value and merits of their claims, request from the creditors to confirm their claims;

g) negotiate on the bank liabilities and claims with the scope of establishing new maturity, reduction, novation, acquisition and transfer of debts;

h) suspend attraction of deposits and/or granting of loans, impose other restrictions on bank's activity;

i) terminate contracts and refuse to fulfill contractual obligations set forth in Art.37¹²;

j) take measures to remedy the financial situation, including restructure the bank (increasing, reducing bank capital, selling assets, transfer of liabilities and assets), reorganization or sale of the bank;

k) submit to the National Bank conclusions and recommendations with regard to the bank, including on establishing of moratorium, extending the term/terminating special administration and withdrawal of license;

l) exercise such other right provided by this Law and other regulations;

(3) In the case referred to in Art. 37⁴ paragraph (2), letter f), the main task of a special administrator is to take the necessary measures for the appointment, if necessary, of the members of the bank's board, executive body and managers. During this administration, the special administrator may take any measures that could be adopted by the mentioned bodies, according to the law.

(4) At the request of the special administrator, the law enforcement bodies must offer assistance in obtaining access to premises and other assets of the bank, in taking control over the bank and ensuring integrity of bank's assets, registers, documents and information.

(5) In exercising its powers and duties, the special administrator shall give high priority to the interests of depositors and other creditors, not affiliated to the bank, in relation to the shareholders and creditors that are bank's affiliated persons. The bank and its shareholders cannot make the special administrator or the National Bank responsible for the prejudices caused in connection with the actions undertaken in the framework of special administration, if such actions were undertaken for the purpose of non-admission of the excessive risk to financial stability, protecting the interests of depositors and other creditors of the bank.

Article 37⁸. The special administrator's report

(1) Within 2 months from the date of its appointment, the special administrator shall submit to the National Bank a written report on the bank's financial situation and perspectives.

(2) The report shall include:

a) the measures undertaken from the establishment of special administration and their effects;

b) the evaluation of implementation perspectives, estimated costs and benefits of the possibilities to remedy the financial situation, including restructuring, reorganization or sale of the bank, or depending on the case, liquidation of the bank, including an estimation of the value of bank assets that could be sold in case of its liquidation;

c) recommendations on the measures to liquidate the circumstances that served as a ground for establishing the special administration, and that can include a detailed action plan consisting of implementation of any measures provided by Art. 37⁷ paragraph (2), letter j) or their combination, without excluding the application or further application of other remedial measures.

(3) Within 15 days from the receipt of the special administrator's report, the National Bank can, depending on the specific case, decide on:

a) the opportunity and term to maintain the special administration;

b) the approval of submitted recommendations, proposed plan, with or without amendments, or on their rejection;

c) the withdrawal of bank license, if it reaches the conclusion on the impossibility to liquidate the circumstances that served as grounds for establishing the special administration and bringing bank's activity in compliance with the law and regulations issued in view of its execution.

(4) The National Bank shall have the right to:

a) change the approved plan, both before and in the process of its implementation;

b) impose certain remedial measures;

c) withdraw the license at any time and initiate the process of forced liquidation of the bank on the grounds provided by this Law.

(5) When analyzing the costs and benefits of different possibilities contained in the special administrator's report, under paragraph (2) letter b) and when adopting decisions under paragraph (3), the National Bank must follow, primarily, the objective of maintaining the financial stability and protecting the depositors' interests, taking into account the option with the lowest cost.

Article 37⁹. Financial recovery measures

(1) In order to remedy the financial situation of the bank, one or more of the following measures could be taken:

- a) changing the structure of assets and liabilities of the bank;
- b) changing the organizational structure of the bank;
- c) additional financing on behalf of bank's shareholders and other persons;
- d) increasing bank's capital;
- e) other measures that allow for remediation of financial situation of the bank and are acceptable for the National Bank.

(2) Changing the structure of assets could involve:

- a) improving loan portfolio, including replacement of non-liquid assets with the liquid ones;
- b) changing maturity term of assets with the scope of ensuring execution of bank's obligations;
- c) reducing expenditures, including administrative ones;
- d) selling certain assets.

(3) Changing the structure of liabilities could involve:

- a) increasing equity capital;
- b) reducing the share of expenditures in the general structure of liabilities;
- c) increasing the medium and long term liabilities in the general structure of liabilities.

(4) Changing the organizational structure of the bank could be done by:

- a) reducing the composition or the number of employees;
- b) changing the structure, reducing or liquidating separate subdivisions and other structural subdivisions.

(5) Additional financing on behalf of banks shareholders and other persons could be done in the following forms:

- a) additional contributions;
- b) renouncing on distribution of profits among the shareholders;
- c) postponing or rescheduling payment of bank debts;
- d) issuing guarantees on loans obtained from the bank;
- e) creating deposits in the bank with low interest rate and sufficiently long term (at least one year);
- f) novation, taking over, transferring bank's debt.

(6) The bank and its shareholders must undertake financial recovery measures in due time.

Article 37¹⁰. Particularities of the bank's capital reduction and increase

(1) If the registered capital losses can not be covered from general reserves, and undistributed profits of previous years, the special administrator may decide to reduce the share capital and to increase the bank's capital.

(2) The decision on reducing the share capital shall be published within 3 days.

(3) In case when the share capital of the bank is reduced as provided by paragraph (1) of this article, the provisions of Art. 45, paragraphs (3) – (5) of Law on Joint Stock Companies, No. 1134-XIII of April 2, 1997 shall not be applied.

(4) If the National Bank, based on the report referred to in Art.37⁸, concludes on the need to increase the bank's capital to ensure the amount of regulatory capital or to remove liquidity shortage or the danger of insolvency, the National Bank may instructs the special administrator

to convene an extraordinary general meeting of shareholders and to propose the adoption of the decision to increase bank's capital.

(5) Within 10 days after the receipt of instructions specified in paragraph (4), the special administrator shall ensure notification of the bank shareholders on convocation of an extraordinary general meeting, while the general meeting of shareholders shall be convened within 15 days from the date of notification.

(6) In case when there is a need to increase the share capital, justified by important reasons and a serious intention on behalf of one investor to participate in the bank's capital, the special administrator can reduce the term of preemption rights of shareholders to 14 days from the adoption of the decision on increasing the bank's capital.

(7) Contributions in view of paying for shares of additional issuance shall be done within the terms established by the special administrator.

(8) In case when the general meeting of shareholders refused to adopt the decision on the increase of capital or in case when the shares were not subscribed or paid by the shareholders in due time, the special administrator can propose to other persons the subscription to such shares.

(9) By way of derogation from the provisions of the securities market legislation, the National Commission of Financial Markets shall register/approve the changes related to the additional issuance of shares within 3 working days after obtaining the positive notice of the National Bank, issued at the request of the special administrator.

(10) The persons contributing to the increase of bank's capital shall purchase the shares of additional issuance under the condition of obtaining the permission of the National Bank in cases provided by this Law.

(11) The special administrator shall undertake necessary measures for bringing the constitutive documents of the bank in accordance with the taken decisions.

Article 37¹¹. Peculiarities of the reorganization and sale of the bank

(1) If the special administrator's report, set forth in art.37⁸, contains recommendations on reorganization of the bank by merging with another bank or its sale or other actions related to the competence of the shareholders general meeting, the National Bank may instruct the special administrator to convene an extraordinary general meeting of shareholders in view of adopting the necessary decisions. Provisions set forth in Art.37¹⁰ paragraph (5) shall be applied accordingly.

(2) If the general extraordinary meeting of shareholders did not adopt the decisions provided by paragraph (1), these may be adopted by the special administrator.

(3) Reorganization of a bank shall be done by the special administrator with the written permission issued by the National Bank, under the provisions set forth in Art.16 and Art.38⁷ paragraph (2), accordingly applied.

(4) In case of reorganization of a bank, the provisions of Art. 93 paragraphs (7) and (8) of Law on Joint Stock Companies, No. 1134-XIII of April 2,1997, shall not be applied.

(5) Selling of a bank to another bank shall be done by the special administrator upon written permission issued by the National Bank under the provisions set forth by Art. 38⁷ paragraphs (2)-(4) and (9)-(15), which shall be properly applied. The special administrator, immediately after transferring the bank's assets and liabilities, shall request to the National Bank, through an application, the withdrawal of license.

(6) In case of withdrawal of a license, the special administrator shall submit to the state registration authority the request for deleting the bank from the State Register of legal entities and shall take other necessary actions under the procedure established by law.

Article 37¹². Particularities of the refusal of execution of the bank's liabilities

(1) Except for the cases provided by civil law, the special administrator may refuse to execute the bank's liabilities arising from contracts and other legal documents, without reparation of caused prejudices, if any of the following grounds exist:

- a) the object of performance constitutes the free of charge transfer of bank assets;
 - b) the object of performance constitutes the investment or future disbursement of bank funds;
 - c) the execution of liabilities is obviously disadvantageous for the bank in relation to other similar liabilities arising from the comparable circumstances. The obligation is assumed as obviously disadvantageous if the reciprocal services of the parties of obligation are non-equivalent by more than 20 percent. The existence of non-equivalence can be proved by the conclusions drawn by an independent expert, as well as by other evidence. The special administrator can prove the obviously disadvantageous nature of the execution of liabilities in other cases as well;
 - d) execution of liabilities will impede the remediation of financial situation of the bank, especially if causing additional prejudices or infringement of interests of the creditors.
- (2) Refusal to execute the liabilities is allowed as long as the obligation remains unexecuted.

Article 37¹³. Particularities related to transferring bank obligations

(1) With the scope of preventing mass requests of the depositors demanding the pre-term execution of bank liabilities, the special administrator may conclude an agreement with another bank (acquiring bank), pursuant to which the assuming bank will accept in whole or in part the liabilities of the first bank (assigned bank) to depositors and other creditors. As compensation for assuming the bank liabilities, the assets of the assigned bank may be transferred to the acquiring bank.

(2) Transfer of liabilities and assets shall be done in conformity with duly applied provisions set forth in Art.38⁷ paragraphs (8), (17), (18), (20)-(23).

(3) In case of transfer of the obligations related to deposits, the entitled depositors shall have the option to keep their deposits in the acquiring bank or to request the bank to repay their deposits.

Article 37¹⁴. Offsetting the reciprocal claims

(1) Establishing the special administration shall not affect the right of a creditor or a bank for offsetting reciprocal claims, if such right arose before the date of instituting the special administration.

(2) The offsetting, including by a unilateral statement made by one of the parties shall not be allowed in the case when:

- a) the creditor's debt to the bank has appeared after the date of establishing the special administration;
- b) the creditor acquired the debt from another creditor after the date of establishing the special administration;
- c) the creditor acquired the possibility to declare the offsetting on the basis of cancellable legal act.

(3) Offsetting acts done in violation of the provisions set forth in the present article shall be void.

Article 37¹⁵. Moratorium

(1) With the scope of preventing the worsening of financial situation of a bank and saving its assets, the National Bank upon establishing or in the course of special administration may decide to postpone the fulfillment of creditors' claims and transfer of bank assets for a term of up to 2 months (moratorium). Moratorium is not an insolvency situation of a bank.

(2) The effect of the moratorium may be limited to certain categories of creditors, claims or assets or to a certain value of them.

(3) The effect of the moratorium does not apply to the following:

a) claims on deposits and other pecuniary obligations that constituted/arisen from the transactions concluded after the date of establishing the moratorium;

b) claims of bank employees for payment of salaries, royalties, compensation for damages caused by mutilation or other harm caused to health or the death, as well as on creditors claims on payment of salaries, pensions, family maintenance, scholarships, social benefits within the limits established by the special administrator;

c) claims on covering administrative expenditures, required for ensuring bank's activity, and provided by Art.38⁸ paragraph (1);

d) carrying out offsetting of reciprocal claims pursuant to Art.37¹⁴.

(4) During the term of the moratorium:

a) interest, penalties and other measures of financial liability for failure to fulfill or undue fulfillment of bank obligations, shall not be applied;

b) interest established on bank obligations shall be calculated but shall be paid only after the expiry of the term of moratorium or in case of its early termination by National Bank;

c) initiation and continuation of judiciary or administrative proceedings, as well as application of other methods of legal protection with the scope of obtaining or ensuring payment related to deposits or debts shall not be allowed;

d) execution of court orders or other acts subject to enforced execution with regard to the monitoring the bank's assets, including pledged assets shall be suspended, except in cases related to claims which are not covered by the effect of moratorium as provided by paragraph (3).

e) satisfaction of the claim of a bank shareholder with regard to the repurchasing of shares following which the shareholder intends to leave the shareholding, shall not be allowed.

(5) An announcement about establishing a moratorium shall be published as provided by Art.374 paragraph (5).

Article 37¹⁶. Expenditures related to special administration

(1) The expenditures related to special administration of a bank shall be incurred at the bank's own expense.

(2) Remuneration of the work done by the special administrator shall be established by the National Bank. Remuneration of the work done by the special administrator in case he/she is an employee of the National Bank shall be carried out at the expense of the latter.

(3) Remuneration of persons hired to provide assistance to the special administrator should not be higher than the remuneration paid to the bank employees for similar services.

(4) The National Bank shall be entitled to establish conditions and limits of expenditures related to special administration.

Article 37¹⁷. Termination of special administration

(1) The special administration shall terminate:

a) upon the expiry of the term for which it was instituted / extended;

b) by the National Bank decision taken before the expiration of the term of special administration, based on a report submitted by the special administrator;

c) in connection with license withdrawal, especially if the circumstances that served as the ground for establishing special administration were not liquidated, or if in the opinion of the National Bank these cannot be liquidated during the period of special administration.

(2) The termination of special administration shall be immediately communicated in writing to the respective bank and Deposits Guarantee Fund and an announcement shall be published as provided by Art.37⁴ paragraph (5).

(3) Termination of the special administration pursuant to paragraph (1) letters a) and b) has as effect the resumption of competences by the bank's managerial bodies and managers suspended from office during the period of special administration unless they have been dismissed under the law and there is no National Bank prescription on the replacement of the administrator or limitation of its powers pursuant to Article 38 paragraphs (2) item 3) letter (f).

(4) In case of termination of the special administration pursuant to paragraph (1) letter c), the activity of the special administrator shall continue until the liquidator assumes the bank management. The special administrator shall immediately give to the liquidator the control over the bank, its assets, records, documents, and information.

(5) Within one month after termination of his/her mandate, the special administrator shall submit to the National Bank the final report on the results of the special administration.

Article 37¹⁸. Disputes related to the special administration

(1) The Decision of the National Bank regarding the establishment/extension of the special administration term, other its actions, as well as the actions of the special administrator may be appealed in a competent court.

(2) Disputes between the National Bank, special administrator and other persons shall be resolved in accordance with Article 38, paragraph (7).

(3) In case of serious violations found in the activity of the special administrator, the court may force the National Bank to dismiss him/her and appoint another person in his/her place.

(4) For concealment of information from the National Bank, its misleading, concealing, damaging, destroying, falsifying documents and bank records for the receipt of money, assets, remuneration, compensations, other illegal favors or promises, undertaking or non-undertaking of certain action, concluding legal documents favoring some creditors over other creditors entitled and for other intentional illegal actions, the special administrator may be subjects to contraventional or criminal liability in accordance with the law.

CHAPTER VI VIOLATIONS, REMEDIAL MEASURES AND SANCTIONS

Article 38. Violations, remedial measures and sanctions

(1) The National Bank may apply the following sanctions if it determines that the bank (financial institution) or any of its shareholders or administrators are guilty of an infraction consisting of: a violation of this Law or regulations of the National Bank, the conditions for issuance of license or the requirements provided by the authorization, permission, approval, confirmation (hereinafter *authorization*); the breach of the fiduciary obligations; obligations stipulated by the legislation regarding the prevention and combating money laundering and terrorism financing, which compliance control falls under the competences of the National Bank, endangers the interests of the depositor; the failure to report; late reporting; reporting of erroneous data on banking prudential indicators or other requirements provided in the normative acts of the National Bank; failure to comply with remedial measures established by the National Bank or if considering the specific current or previous financial situation of the bank (financial institution):

a) issue written warning;

d) impose fines to the bank (financial institutions) up to 0.5% of the capital of the bank (financial institution) and/ or to the administrator within 1 to 10 average salaries on financial activities according to data of the National Bureau of Statistics for the month preceding the date of infraction, including for non-compliance to the decision of suspending the transaction, issued by the body entitled with powers related to the prevention and combating money laundering and terrorism financing;

e) withdraw the confirmation issued to the administrator of the bank (financial institution);

f) limit or desist the activity of the bank (financial institution);

h) withdraw the license or authorization.

(2) In case of finding out the violations mentioned in paragraph (1), the National Bank may require the bank (financial institution) the following remedial measures, but not limited to these:

- 1) to prescribe the bank the termination and liquidation of the committed violations;
- 2) to conclude an agreement with the bank that provides remedial measures;
- 3) to prescribe one or more of the following measures to the bank:
 - a) that the average total assets of the institution during each quarter shall not exceed its average total assets during the preceding quarter;
 - b) that the institution not acquire any equity interest in any legal entity, establish or acquire any additional branch office, or engage in any new line of business;
 - c) that the institution not grant any extension of credit to an affiliate unless such credit is collateralized by Government issued or guaranteed tangible assets, whose market value exceeds at all times 125% of the amount of the credit;
 - d) that the interest rate the institutions pay on deposits shall not exceed the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located;
 - e) to restrict, suspend any activity; to restrict, suspend or prohibit certain transactions or operations;
 - f) that the institution substitute one or more administrators who had held office for more than 180 days immediately before the bank (financial institution) became undercapitalized or restrict their competences;
 - g) to divest itself of or to liquidate any subsidiary if the National Bank determines that the subsidiary is becoming insolvent and poses a significant risk to the financial risk or is likely to cause significant dissipation of the institution's assets or earnings;
 - h) that no employee receives any payments (bonuses and other additional payment to the basic salary), retributions (compensations), except those provided by labor legislation or salaries exceeding the amount of average salaries (excluding bonuses, retributions and stock options and profit sharing) during the twelve calendar months preceding the month in which the institution became undercapitalized;
 - i) to increase reserves to cover the possible losses on loans and other assets;
 - j) to prohibit the payment of dividends or other distribution of capital;
 - k) to implement measures of financial recovery referred to in Article 37⁹.
- 4) to establish special supervision or, where appropriate, a special administration of the bank, according to chapters V¹ and V².

(3) The National Bank shall withdraw the license and initiate the forced liquidation of the bank in case if it is found that the bank is in one of the following insolvency situations:

- a) the bank is unable to execute the payment requests of the creditors regarding the outstanding monetary obligations (default);
- b) the bank's assets no longer cover its obligations (over-indebtedness);
- c) the bank's capital is less than one third compared to the regulated capital.

(3¹) In the event a bank is insolvent or over-indebted, or there is a risk to face insolvency situation, the executive authority of the bank is obliged to inform immediately the National Bank of Moldova.

(4) The measures and penalties provided in this article shall not preclude application of other measures and penalties as provided by the legislation.

(5) The measures and penalties applied by the National Bank in accordance with this article shall be paid to the State budget.

(5¹) Finding violations, applying sanctions and other measures shall be carried out according to the provisions of Law no. 548-XIII of July 21, 1995 on the National Bank of Moldova, if this law does not provide otherwise.

(5²) Sanctions and other measures shall be applied by the Council of administration of the National Bank. The sanctions and measures provided in paragraph (1), letter a), paragraph (2)

items 1) and 2) can be applied by the governor, first deputy governor or deputy governors, and those referred to in paragraph (1), letter d), paragraph (2) item 3) – by the National Bank’s governor.

(5³) If the law does not provide otherwise, the application of sanctions and other measures is subject to professional and banking secrecy provisions.

(5⁴) The National Bank is the sole authority able to decide on considerations of opportunity, qualitative assessments and analysis, which underlie on the issue of acts regarding the application of sanctions and other measures.

(6) By derogation from legislative provisions on administrative contentious matter, only the shareholders of the banks that in total hold at least 25% of voting shares, depositors that hold at least one-fourth of total deposits or other creditors that hold at least one-fourth of total credits (except deposits) may address the competent court within 30 days from licence withdrawal to appeal the decision of the National Bank to withdraw the license indicating the reasons within provisions of paragraph (3).

(7) The measures and penalties applied by the National Bank of Moldova may be appealed by a competent court. Where a suit is instituted against the National Bank of Moldova with regard to application of provisions of this Law, it shall be presumed that:

a) if the court determines that the actions applied by the National Bank towards the bank are illegal, the National Bank shall pay all material claims and the withdrawal of license shall remain valid;

b) the suit shall not have impact upon the liquidation process and shall not determine the suspension of actions applied by the National Bank.

c) the court shall establish the legality of actions undertaken in order to execute the present law and shall decide solely on the fact if they were intentionally or unintentionally.

d) the National Bank’s employees, members of the special supervision commission, special administrator, liquidator and persons employed to assist them, shall not be liable for damages, actions or omissions that occurred when exercising their duties, except for cases if it was proven that these are intentional and unlawful.

CHAPTER VI BANK’S FORCED LIQUIDATION

Article 38¹. General provisions regarding the forced liquidation of the bank

(1) In case of withdrawal of the bank license as a result of finding at least one of the situations of insolvency referred to in Article 38, paragraph (3) or in one of the other situations stipulated in Article 10, except paragraph (1), letters a), f), h) and paragraph (2) of this Article, the National Bank, ex officio, shall make the decision to initiate the process of forced liquidation of the bank.

(2) Liquidation of the bank for other reasons than that of insolvency does not impede the initiation of forced liquidation under insolvency grounds, except if during the process of liquidation it was found that the bank had become insolvent.

(3) Upon the withdrawal of the license and beginning of the process of forced liquidation of the bank, the National Bank appoints a liquidator. For founded reasons, the National Bank may replace the liquidator.

(4) The Order of the National Bank on the appointment (replacement) of the liquidator shall be published within seven days after its adoption in the Official Monitor of the Republic of Moldova.

(5) From the date of withdrawal of bank license:

a) the National Bank shall close the accounts in MDL of the respective bank and open a new account specifying “bank in the liquidation process”, where the available at that time funds

will be transferred and through which the liquidator shall conduct all MDL operations of the bank to be liquidated;

b) the liquidator shall close the accounts in foreign currencies opened in other banks (including in the National Bank), and the foreign currency available in these accounts at that time, upon the liquidator's order, shall be transferred according to the types of foreign currency in one or more accounts with the specification indicated in letter a), opened with a bank/banks from the Republic of Moldova, by means of which the liquidator will carry out the foreign currency transactions of the bank to be liquidated.

(6) Forced liquidation of the bank shall be carried out extra judicially.

(7) The process of bank's liquidation cannot exceed 3 years from the date of the license withdrawal. The term may be extended by the National Bank for maximum one year, based on the justified request of the bank's liquidator.

Article 38² Conditions for the appointment of a liquidator

(1) An individual that meets a bank's administrator requirements shall be appointed as liquidator which are established in the respective regulation of the National Bank.

(2) Liquidator can not be the person that:

(a) has criminal record;

(b) the last 5 years was sued in civil court for fictitious or simulated legal acts, acts affected by error, concluded through fraud, violence, following a fraudulent agreement or the violation of fiduciary obligations;

(c) is charged against criminal offences or accused in a civil lawsuit;

(d) did not honour its payment obligations or interest payment to the bank under liquidation or to any bank for the last 3 years.

(3) In order to determine the existence/inexistence of the conflicts of interest, the liquidator will submit, before its appointment, to the National Bank the information about its personal and business interests, as well as information about its financial relations, of its spouse and children, including about:

a) the debt to the bank under liquidation, the activity in that bank or about the ownership of certain rights;

b) the relations over the last 5 years with any bank as employee, administrator or shareholder with a significant interest;

c) the financial, business or individual relations with any person that has certain interests in the bank under liquidation and its assets, including information about a future employment to the given person;

d) the failure to honour the patrimonial obligations to any other bank over the last 5 years;

e) the ownership of a property that competes with the bank's real estate if the bank's liquidation requires their assessment, possession and management;

f) other financial and business interests that can affect to exercise impartially the function of liquidator;

g) other information required by the National Bank.

(4) Additionally to the information mentioned in paragraph (3), the person will submit the information that certifies the inexistence of any conflict of interest following its personal interests and relations with the National Bank, and if such a conflict exists – the information about this conflict and, despite this fact, will request the National Bank to authorize the activity of liquidator.

(5) Before appointing the person as liquidator, the National Bank should ensure itself that there is no conflict of interest, and if such a conflict exists, should convince itself that the person is capable to act impartially under the immaterial nature of the conflict and will consider it as exception.

(6) In the event a conflict of interest occurs after its appointment, the liquidator will inform the National Bank immediately after he found out about, as well as on the actions that he has

undertaken or will undertake for eliminating the conflict, and will require the permission of the National Bank to continue its activity.

(7) If the National Bank determines that such a conflict is unacceptable, the liquidator should resolve it in a way that would satisfy the National Bank or should resign.

(8) The liquidator will carry out impartially its attributions. Thus, he is not empowered to:

a) to perform its activity if there is a conflict of interest, except for the case when the National Bank was informed about and allows him to continue its activity;

b) to request or accept, directly or indirectly, any services, gifts, other valuables and benefits from any person about which the liquidator knows that he/she intends to obtain certain advantages in relation with the bank's liquidation or has interests that can be affected substantially by the execution/non-execution of certain attributions by the liquidator.

c) to use or to allow the use of the goods of the National Bank or of goods the liquidator has the right to manage for its personal interest or for the third parties' interest, apart from the interests of the National Bank and other banks under liquidation;

d) to make promises or assume commitments in the name of the National Bank without its authorization.

(9) The liquidator has no right to disclose the information that represents a commercial and banking secret or any other secret protected by law only if it is necessary in the exercise of its duties.

Article 38³. Liquidation announcement

The liquidator:

a) posts to every separate subdivision of the bank, within 3 days from the date of its appointment, an announcement about the withdrawal of the bank's license and the beginning of the liquidation indicating the name and surname of the liquidator, the date and place when he becomes the bank's administrator.

b) publishes the announcement indicated under letter a) in the Official Monitor of the Republic of Moldova, in newspapers of general circulation, as well as in newspapers wherever the bank has separate subdivisions;

c) delivers to the National Bank, within 3 days from the publication of announcements, copies thereof.

Article 38⁴ Liquidator's main attributions and rights

(1) The liquidator has exclusive rights to govern, manage and control the bank (hereinafter – bank's management) and to undertake any measures for its efficient liquidation and for obtaining the maximum amount from the sale of assets, including the right:

a) to continue or desist any operation of the bank;

b) to borrow money guaranteed with its assets or without guaranty;

c) to suspend or limit the payment of debts provided under letter g) the forth line;

d) to hire specialists, experts or professional consultants;

e) to administer the bank's account;

f) to collect the debts to the bank and to recover its goods owned by the third parties, to contact the law authorities;

g) to perform any operation in the name of the bank, taking into account the necessity of obtaining the preliminary approval of the National Bank for carrying out the following operations:

- the sale or other form of liquidation of any asset of the bank in the value of over 1 million lei;

- the extension of guarantees based on the bank's assets in favour of the creditor that extends to the bank a new loan of over 500 thousand lei.;

- the reduction or cancellation of any debt to the bank, whose validity is doubtful, if this exceeds 200 thousand million;

- the payment of any debts to the bank (except debts resulted from commitments assumed by the liquidator in the exercise of its function) before the closing of procedures provided under Art. 38⁹ and 38¹⁰, including the payment of debts to depositors and other creditors in the amounts which, in the opinion of the National Bank, can be used for this purpose, at the same time taking into account the fact that all depositors and other creditors that are in similar situations should be fairly treated;

h) to receive bank registers, documents and information from the management bodies, the bank's employees and any other person;

i) to formulate the objections against the creditors claims submitted to the bank, to negotiate the bank's obligations with a view to their novation, reduction, rescheduling, and taking these over by another person or remission of debts, to terminate the bank's contracts in accordance with the legislation.

(1¹) Immediately after undertaking bank's management, the liquidator shall take measures to ensure the integrity of bank assets, registers, documents and information, as well he/she may undertake measures envisaged in Article 37⁶ paragraph (7), notifies the separate subdivisions of the bank, correspondent banks, the state registration body, the holders of public registers, central securities depository and registrar that maintains the register of holders of securities of the bank and, where appropriate, other persons with regard to license withdrawal, initiation of the process of forced liquidation of the bank, and communicates information about himself/herself.

(1²) At the request of the liquidator, the law enforcement authorities are obliged to assist him/her in obtaining the access to premises and other assets of the bank, in undertaking control and ensuring the integrity of assets, registers, documents and bank information.

(2) The liquidator has also other attributions and rights provided by the present regulation.

(3) While exercising its powers and duties, the liquidator is liable only to the National Bank.

Article 38⁵ Effects of the initiation of the liquidation procedure

(1) In addition to the effects specified in Article 11 paragraph (3), since the date of the license withdrawal:

a) the calculation of interests and penalties against bank's obligations shall be interrupted, while obligation that have not reached the maturity should be considered outstanding. The bank is not liable for the infringement of its obligations due to the fortuitous impossibility of performance in connection with its license withdrawal;

b) claims to the bank shall be satisfied as provided by this chapter;

c) the exercise of any right on the bank's assets, including tracing in connection with judiciary and execution proceedings with the scope of collecting debts, shall be suspended. No right can be exerted over assets during the bank's liquidation, except rights given to liquidator according to the present chapter and claims on covering expenditures related to the liquidation process;

d) the payments or transfers of bank's assets performed before the beginning of the liquidation, to the detriment of the creditors interests could be declared void, except payments up to the ceiling of deposits guarantee for each depositor according to Law no.575-XV dated December 26, 2003 on the guarantee of household deposits within the banking system;

e) the liquidator takes over all vested rights of the bank's management bodies, and becomes the sole legal representative of the bank. The liquidator can authorize other persons only with those rights that he considers necessary, if the National Bank agrees;

f) the previous decisions adopted by the bank's management bodies shall be considered invalid if they are not approved (authorized) by the liquidator, as well as if they constitute an impediment in the exercise of its rights and duties;

g) operations in the bank account shall be suspended, compulsory tracing of the bank assets shall be ceased, and the seizure and other restrictions applied on it shall be lifted";

h) acceptance and performance of payments on the corresponding accounts of the bank clients shall be discontinued, while payments collected in their benefit after the date of license withdrawal should be restituted to the accounts of payers maintained in the paying banks.

i) fulfilling the obligations to the bank shall be made directly in favour of the bank even if pursuant to the clauses of the obligation the debtor has the right to fulfill the obligation in favor of another person;

j) paying off the creditor claims by offsetting reciprocal claims is not permitted, except for cases in which the right of the parties for compensation appeared before the date of license withdrawal as well as in connection with debt maturities of the respective class pursuant to the order of priority of established claims classes;

k) assignment of creditor debts, following which the new creditor (assignee) will belong to a class of claims of a higher priority compared with the one to which the assignor belonged to is not permitted;

l) the action of the mandate (power of attorney) issued by the bank ceases except for the case in which its ceasing could cause damage to the bank;

m) the creditors can submit their claims only within the process of liquidation except for claims regarding the payment of expenditures related to the liquidation process.

(2) The payments or transfers of bank assets performed before the onset of the liquidation process to the detriment of the creditors' interests are presumed to be the legal acts related to the:

a) payment or transfer, made simultaneously, fictitiously or with the intention of all the involved parties to conceal bank assets from the prosecution by the creditors or infringe their rights in any other way during 3 years prior to license withdrawal;

b) free transfer performed during 2 years prior to the license withdrawal except the ones for sponsorship and charity according to the law;

c) free transfer performed with the bank affiliated persons during 2 years prior to license withdrawal;

d) any payment or transfer in which bank performance is obviously exceeding the received one performed during one year prior to license withdrawal;

e) anticipated payments of debts performed during 6 months prior to license withdrawal if the maturity was established for a date subsequent to the date of license withdrawal;

f) establishing a pledge by the bank or any other real collateral for a debt that was unsecured during 6 months prior to withdrawal of license.

(3) The withdrawal of license does not have any retroactive effects on the bank claims and obligations arising out of or having connection with its participation in a payments or settlement system done prior to license withdrawal; and, it does not affect the execution of irrevocable securities payment/transfer documents accepted from the bank for settlement within the system of payments/system of settlements of securities prior to the withdrawal of the license.

None of the provisions of the law or other regulation or practice with regard to invalidity, termination of contracts and other legal acts, postponement or delay of obligations concluded/made up prior to the date of license withdrawal cannot result in cancelling (reversal) of the results of operation of settlement/clearing carried out in the securities payment /settlement system.

(4) Public utilities services providers holding a dominant position (supply of electric energy, natural gas, water, telephone, etc.) have no right unilaterally to refuse or interrupt the provision of such services to the bank from the date of license withdrawal, even if the bank has not paid the previously provided services. Reduction or interruption of services provision aforementioned may take place only if the liquidator does not pay, according to the contract, for the current services rendered after license withdrawal.

(5) In case when some movable asset sold to the bank but unpaid integrally at the time of license withdrawal, is found in the process of transfer (transit) or the bank or other authorized persons have not yet come into the possession of this asset, the seller may repossess this asset. In

this case, the seller shall return any payments made in advance by the bank for the respective asset having the right to submit claims for the expenditures related to this transaction.

(6) In case if according to the contract with bank's participation, the obligation of a party to conclude a transaction with shares becomes outstanding after the date of license withdrawal, the contract shall be deemed terminated on that date. In this case, the difference between the contract price and value of the shares from the date of license withdrawal shall be paid to the bank, if there is a loan or added to the bank debts if there is a debt.

(7) The bank's executive bodies, not later than the next day following the day the liquidator takes the bank management, shall give off the bank's stamps and seals. Within the term established by the liquidator, any person holding the registers, documents, material values and other bank values of the bank is obliged to give them off. In case of violating these obligations or impeding liquidator's access to premises, assets, registers, documents, and bank's information, the guilty person is liable according to the law.

(8) The suspended procedures according to paragraph (1) letter c) cease from the date of registering the list of claims at the National Bank if the claim, constituting the object of procedure, was included in the list of claims validated by the liquidator and in case there are no objections. The aforementioned procedures may be resumed at the request of the creditor if:

a) the claim was not included in the list of claims registered at the National Bank;

b) the claim was included in the list of claims registered at the National Bank but a creditor has submitted objections to it.

(9) Bank creditors are entitled to submit their claims within a term of 3 months from the date of bank's license withdrawal. The creditors submitting their claims after the expiry of this term, but in any case prior to the closure of distribution (liquidation) of all assets of the bank may demand for honoring their claims as stipulated by art.38¹¹ paragraph (6).

Article 38⁶. Procedure of liquidation

(1) Within 3 months from the date when the liquidator becomes the bank's administrator, he begins performing the inventory of the bank's assets and delivers to the National Bank a copy thereof, to which the public will have the permanent access.

(2) The liquidator will undertake the measures provided under Art. 38⁷ through transparent procedures in accordance with the legislation in force so that other banks and concerned persons could make offers for these assets, if this chapter does not provide otherwise.

(3) The liquidator, from the date when he becomes the bank's administrator, can rescind:

a) the labour contract with any employee of the bank;

b) the contracts of rendering of services to which the bank is party;

c) the contracts of location of immovable and movable property, with the condition of informing the shareholder with 30 days before about the fact that the bank exercises its discretionary right to rescind the contract of location. The shareholder has no right to require the refundment of payments related to location after the resiliation of the contract. In the event of the liquidation, no prejudice related to the contract resiliation will be repaired.

(4) Within 2 months from the date of becoming the bank's administrator, the liquidator:

a) undertakes the necessary measures in order to desist the bank's fiduciary obligations, and performs final settlements related thereto;

b) posts to all depositors, other creditors and safety services clients, to the addresses indicated in registers or handing over against signature registered notices about the type and the amount of their debts to the bank according to registers, about the necessity of withdrawal of goods by the safety services clients. The notice shall mention that the objections can be presented to the liquidator within one month from the receipt of the notice.

(5) The goods kept safely at the bank, which were not withdrawn by the shareholder until the date mentioned in the notice, will be taken over by the liquidator to be transmitted afterwards to the shareholder according to the legislation in force.

(6) The goods kept safely at the bank along with their registers and, which were not withdrawn by the shareholder shall be considered goods that other creditors can not claim.

(6¹) The goods of the bank constituting the object of pledge are included in the composition (inventory) of bank assets but are used for satisfying the pledgee's claims in the order of priority prior to satisfying other claims provided by this law.

(6²) In case of insufficiency of funds obtained from the sale of the asset pledged to honor the claims of the pledgee or in case the creditor signs off his right of pledge, the non-honored claims are subject to honoring following the priority of classes of claims set forth in art. 38¹¹.

(7) The liquidator will submit to the National Bank, upon its request, reports and information related to the bank's liquidation.

(8) The provisions of this article, except paragraphs (2), (6¹), (7) shall not be applied in case of bank sale according to Article 38⁷ paragraph (1) letter a).

Article 38⁷. Actions undertaken by the liquidator. Sale procedure, transfer of assets and transfer of bank obligations

(1) The liquidator undertakes the following actions:

a) sales, with the written permission of the National Bank, the bank as a unique patrimonial complex to another bank (bank-buyer), taking into account the provisions of the present chapter;

b) organizes the sale and/or partial assumption of the bank's assets and liabilities to another bank;

c) liquidates the bank's assets under the conditions of the present chapter.

(2) In order to perform the sale-purchase transaction provided under paragraph (1) letter a) the bank-buyer will fulfill the following conditions:

a) will maintain the regulatory capital no less than the double quantum of the minimum capital established under Art. 5 paragraph (1);

b) its assets should be bigger than the assets of the bank object to sale;

c) after the transaction performance, the bank-buyer will correspond to the conditions established under Art.7 paragraph (2).

(3) By derogation from the provisions of Law no. 1134-XIII dated April, 2, 1997 on joint-stock companies, the decision of the bank-buyer on transaction conclusion, related to the purchase of the bank under liquidation or of its assets according to paragraph (1), shall be taken by:

a) the council of the bank, with the majority of votes, if is 25 % but not more than 50% of assets of the bank-buyer according to the last balance sheet, until the adoption of the respective decision;

b) by the general meeting of shareholders, with the simple majority of votes, if the value of transaction is over 50% of assets of the bank-buyer according to the last balance sheet, until the adoption of the respective decision.

(4) The National Bank does not accept the request on the issuance of authorization for the bank's sale if:

a) estimates that the financial situation of the bank-buyer will worsen;

b) considers that the sale will lead to the breach of requirements by the bank-buyer related to the financial activity performance provided by the present law and by the normative acts issued for its execution:

c) the documents provided for the obtaining of permission contain incomplete, insufficient or contradictory information or the documents required additionally were not submitted, which are necessary for taking the decision for the issuance of authorization to perform the transaction.

(5) In cases provided under paragraph (1) letter a) and b), the liquidator can reduce the value of certain debts so that its depositor or other bank's creditor shall not receive less than in case of the fulfillment of bank's obligations under Art. 38¹¹.

(6) The liquidator decides on the measures enumerated in paragraph (1), which, in his opinion, lead to the obtaining of the maximum amount from the bank's sale or its assets and protect the depositors' interests and of other creditors.

(7) While determining the amount that could be obtained from bank's sale or its assets, the liquidator is obliged:

a) to evaluate the alternative offers, taking into consideration the market value of assets and applying the real rate of reductions;

b) to inform about the assessment and assessment criteria, including the interest rate, the rate of assets' recovery, the cost of assets' keeping and unforeseen expenses.

(8) The provisions of paragraphs (2)-(4) shall be applied accordingly to the transactions referred to in paragraph (1) letter b), if the value of transferred assets or obligations exceeds MDL 10 million.

(9) In order to conclude the transactions referred to in paragraph (1) letters a) and b), the liquidator shall organize an informative meeting with all the banks considered eligible to present the terms and conditions of negotiation. Before the informative meeting, the liquidator shall sign with the banks attending the meeting an agreement of confidentiality whereby they undertake to keep, under the law in force, the secret information on the tendering procedure related to the bank in the process of liquidation, its assets and liabilities that would become the object of negotiation. Failure by the administrators, shareholders, employees and other persons acting on behalf of the bank that has signed the confidentiality agreement to perform the obligation of secrecy attracts contraventional and material liability and the exclusion of the respective bank from the participation in tender.

(10) Depending on the interest manifested by the banks attending the meeting, the liquidator shall conclude a bidding offer with regard to the respective transactions that include mainly the categories and volume of assets and obligations that would make up the object of transaction, the fees established by the liquidator to be paid by the bidder, the deadline for bids submission which can not exceed 15 days.

(11) The liquidator transfers under confidentiality regime the bid offer on the respective transaction to the bidding banks that participated at the informative meeting and that have shown interest in such transaction.

(12) The liquidator should ensure access of bidding banks to the documents and information concerning the bank and its assets and liabilities that will form the object of future negotiations. Appeals of the stakeholders shall be examined in accordance with Article 38 paragraph (5⁴) and paragraph (7).

(13) Within the term established for bids submission, the bidding banks shall transfer to the liquidator in a sealed envelope their offers for the proposed transaction.

(14) In the shortest possible time, the liquidator shall examine the offers and shall select, based on the principle of minimum cost, the offer/offers of the banks with which the respective transaction/transactions shall be concluded. The liquidator may decide on concluding the transaction in case of a single bidder as well.

(15) The liquidator and the winner bank of the tender shall sign a pre-contract in which the parties stipulate their obligations and, where appropriate, the date of termination of the contract, and the parties obligations for the period prior to the signing period.

(16) In the event of termination of the transaction, which envisages transfer of bank obligations, the provisions of this law on the registration at the National Bank of the list of claims to the bank, the part referring to transferred obligations shall not be applied.

(17) In case when the assets that will be transferred are not sufficient to cover the value of all obligations of the bank and the bank acquiring assets and liabilities (acquiring bank) has not given its permission for assuming all liabilities of the bank then only the obligations that belong

to one/some class(es) of claims in compliance with the order of priority of classes of claims established by Article 38¹¹ will be transferred. In case if the assets to be transferred are not sufficient to cover all obligations in a class of claims, it is possible to transfer only a part of the obligations to each creditor from the respective class of claims.

(18) The obligations to creditors who are bank affiliated persons cannot be transferred if the obligations to other creditors from the respective class of claims are not transferred or are not satisfied.

(19) In case of transfer of assets and liabilities, the order of priority of satisfying claims pursuant to art.38¹¹ should be observed and none of the transfers of assets and liabilities will be allowed if this will change the specified order of priority.

(20) Transactions referred to in paragraph (1) do not require the permission of the management, shareholders of the bank, deponents and other creditors. In case of transferring bank obligations, the liquidator notifies the creditors in the shortest time possible on this fact, as set forth in Article 38⁹ paragraph (10).

(21) The purchasing bank/ acquiring bank bears responsibility only for the obligations assumed according to the conditions of transaction. Obligations arising from the actions of a bank of which liquidation is done on the grounds of insolvency are considered redeemed.

(22) The part of bank sale contract or that of the contract of transfer of its assets and liabilities is exempted from any taxes and payments related to the aforementioned contracts charged for making entries in public registries and services provided by the public authorities.

(23) The liquidator shall submit to the National Bank the copies of the contracts of bank sale, transfer of assets and liabilities of the bank immediately after signing them.

(24) If before taking over the bank's liabilities, there were made payments in advance in its favor by the purchasing/ acquiring bank, during the specified period on such payments shall be applied the regime of loans issued to the bank following the appointment of the liquidator.

(25) If within the term established in the tender demand with regard to the conclusion of transactions referred to in paragraph (1) letters a) and b) no bids are received or the received bids do not match the feasibility requirements for such transactions or if the National Bank rejects the issuance of a permission under paragraph (4), the liquidator shall proceed to other methods of liquidation of bank's assets and liabilities.

26) Liquidation of assets consists of making use of these assets with the a view to obtain funds to honor the creditors' claims and this shall be done by selling assets, such as buildings, land, securities, receivables, or by other methods, such as assignment of debts or novations at a negotiated value.

(27) The sale of assets is carried out taking into account their market value and taking into account the particularities of this article. The market value is not determined by the purchasing price of the asset or by its value provided by the bank's balance sheet but rather by the amount that may be obtained for this asset from the potential buyer. In this case, for tax purposes, the basic value of assets shall be determined under the provisions set forth in the Tax Code No. 1163-XIII of April 24, 1997.

(28) When selling the assets, the receivables resulted from the contracts of credit, financial leasing and factoring contracts may be offered for sales as a single lot (sale of the bank's loan portfolio). The liquidator may sell to another bank or to any other person the receivables with a discount if it concludes about the impossibility of obtaining a larger amount of receivables, taking into account the cost of assets recovery and time required for that.

(29) The feasibility of the submitted offer shall be examined by the liquidator taking into account his obligation to liquidate the assets without any unjustified delays as well as if the sale of assets is carried out in a strict time and the price may become lower than on sales in more favorable circumstances.

(30) If the assets are not sold due to lack of demand or the cost of sale exceeds their value, or due to other founded reasons, the liquidator may renounce the bank's rights on these assets after obtaining the written permission of the National Bank.

Article 38⁸. Expenses related to liquidation process

(1) Expenses related to the bank's liquidation process shall be made prior to other debts to the bank from the funds of its account. These expenditures include:

a) obligation to pay for public utilities and operation services, insurance costs for maintaining integrity of assets, other expenditures required to maintain the continuity of bank functioning arising in the period before and after the license withdrawal;

b) obligation to pay rental services, employee labor remuneration, allowances in relation to their dismissal, the labor remuneration of the liquidator and the persons involved therein,, court costs, expenses relating to the publication of announcements, delivery of notifications, inventory, assessment, administration of property (including the transfer of property), distribution (liquidation) of bank assets, other expenditures and payment obligations required in the process of bank liquidation as well as obligation to pay taxes, fees and other obligatory payments in the period after the license withdrawal.

(2) The remuneration of the liquidator shall be established by the National Bank and shall be paid from the funds of account of the bank under liquidation, except the case when the liquidator is an employee of the National Bank.

(3) The remuneration of the persons that assists the liquidator in the liquidation process can not be bigger than the remuneration of the banks' employees for similar services.

(4) In the event of insufficient means for covering the expenses related to the bank's liquidation according to paragraph (1)-(3), the National Bank is empowered to cover them.

(5) The National Bank is empowered to establish the conditions and limits of expenses related to the bank's liquidation.

Article 38⁹. Preliminary measures related to the payment of debts to the bank

(1) Within 5 days from the date of license withdrawal on the grounds of insolvency, the liquidator, based on the registers and other data available at the bank, establishes the amount due for each personal deposit guaranteed in accordance with the Law No.575-XV of December 26, 2003 on guaranteeing individuals deposits in the banking system, prepares a list of claims related to these deposits and transfers it to the deposits guarantee fund in the banking system for making payments in accordance with the aforementioned law.

(2) Within 2 months from the last date mentioned in the notice provided under Art 38⁶ paragraph (4), letter b), the liquidator:

a) does not accept the debts whose validity is doubtful;

b) establishes the amount due to each depositor, another creditor and the priority classes of debts;

c) works out the list of debts validated in order to be registered at the National Bank;

d) informs in written form each person whose debts were not entirely validated;

e) publishes an announcement three times, within a time frame of 7 days, in the Official Monitor of the Republic of Moldova, in newspapers of general circulation, as well as in newspapers wherever the offices of the bank concerned are located, about the date and the place where the creditors could find out the information on their validated claims, as well as about the date when the liquidator will present the list of claims to the National Bank in order to be registered and, which will be established within the limit of 15 days from the date of the last announcement publication.

(3) Creditors claims shall be established based on the registers, documents and other information available to the bank and in case of submission of claims by the written request of the creditor – and based on court decisions and other documents confirming the validity of claims.

(4) The value of the claim of deponent, having more than one deposit in the bank, is established by summing up all the deposits.

(5) The amount of debt denominated in foreign currency is set at the official rate of MDL against the respective foreign currency, as of the date of withdrawal of bank licenses, and paid in lei.

(6) The full name, address (for individuals), name, legal address (for legal entity) of the creditor, bases, and the amount of debt shall be entered in the list of claims. Contested claims or claims subject to litigation are entered in the contested part separately with the respective notes. The creditors whose claims secured by collateral (secured creditors) shall be recorded on a separate list indicating the pledged asset. Other relevant information may be recorded in the list of claims for satisfying them.

(7) The claims shall be included in the list in the order of priority classes. The sheets of the list of claims shall be numbered and stitched together.

(8) The list of claims is subject to provisions with regard to the banking secrecy.

(9) The National Bank shall record the list of claims within a term of 5 days from the date of its proper submission by the liquidator. Registration of the list of claims shall not involve examining the merits of the claim, the value of each validated claim and the class of claim in which this is included as well as their correction.

(10) Prior to starting the process of honoring the claims according to the respective class of claims, the liquidator shall publish at least in one newspaper of general distribution and in one newspaper from the localities where the bank has its separate subdivisions, an announcement on the place, manner, and terms of honoring.”

(11) In case if, before the date of starting honoring the claims of the creditors, the liquidator became aware of the disputes examined in court between the creditor and the liquidator regarding the creditor's claim not included in the list of claims and claims submitted before the registration of the list of claims at the National Bank, he/she shall set apart funds for the proportionate satisfaction of the respective claim, within the possibilities of funds available to honor the class of claims to which this claim belongs.

Article 38¹⁰. Complaints on preliminary measures related to the payment of debts to the bank

(1) Within 20 days from the date of registering the list of debts to the National Bank, any depositor, any other creditor or one or more shareholders of the bank that hold at least 10% of shares with voting right can complain to the National Bank against the measures undertaken by the liquidator provided under Art. 38⁹ paragraph (2), letter a) and b). The National Bank will solve this situation within a month from the date of complaint submission.

(2) In case the expressed objections are motivated, the National Bank issues an order on the modification of the list of debts and of the mechanism proposed for their payment.

(3) After the expiration of the term for solving the contestation indicated in paragraph (1), the list of debts registered to the National Bank can not be modified.

Article 38¹¹. Payment of debts to bank and payment priorities

(1) The payment of debts to the bank under liquidation is performed after the expiration of the term for solving the contestation provided under Article 38¹⁰, with the condition of their validation and registration of the list of debts to the National Bank, if not otherwise specified.

(2) The debts related to household deposits, guaranteed according to Law no. 575-XV dated December, 26 2003 on the guarantee of household deposits within the banking system, shall be honoured by the Deposit Guarantee Fund according to the mentioned law, after receiving the list of claims made by the liquidator according to Article 38⁹ paragraph (1).

(2¹) Validated claims related to the bank's employee's salaries for the period up to three months preceding the withdrawal of bank licenses, payment of family maintenance, repair of damage caused by mutilation or by another injury to health or death shall be honored before honoring the claims under paragraph (3).

(3) The validated debts shall be honoured according to the established priority classes of debts, as follows:

a) credits extended to the bank by the National Bank until the appointment of the liquidator;

b) the unpaid amounts on household deposits, remained after the performance of payments according to Law no. 575-XV dated December, 26 2003 on the guarantee of household deposits within the banking system, in the limit established by the National Bank;

c) credits extended to the bank by other banks until the appointment of the liquidator;

d) credits extended to the bank after the appointment of the liquidator;

e) the debts of the Deposit Guarantee Fund in the amounts paid as compensation of guaranteed deposits;

f) the unpaid sums on household deposits, remained after the performance of payments according to letter b):

g) deposits of businesses and of individual enterprises;

h) the payments to the national public budget, settled from contributors, which were not transferred on the respective accounts of the budgetary system;

i) other debts.

(3¹) Creditors' claims that belong to one class of claims should be honored after satisfying all the claims that belong to the preceding class of claims.

(3²) If within the period announced by the liquidator to honor the claims, the creditor does not appear to receive his claim, the liquidator shall deposit the funds due to this creditor to an account opened with another bank on behalf of the creditor.

(4) The validated debts based on the decision of the law authorities shall be honoured according to the established schedule for the classes of debts enumerated in paragraph (3), except for claims not registered on the list of claims in due time (unregistered claims), validated on the basis of decisions issued after the deadline for solving the contestation pursuant to Article 38¹⁰ paragraph (1), which shall be honored:

a) from the reserved funds – in cases provided by Article 38⁹ paragraph (11);

b) after the payment of claims of the respective class (but prior to satisfying claims from the next class) if the payments in view of satisfying these claims started before the liquidator received the unregistered claims;

c) under paragraph (6), if the unregistered claims were received by the liquidator after satisfying all the claims.

(5) If the amount available for the payment of debts from one of the classes mentioned in paragraphs (2¹) and (3) is insufficient for their total coverage, the value of each debt from this class shall be reduced proportionally.

(6) After the payment of all validated debts, the debts remained unpaid, unregistered in due time in the list indicated under Art. 38 letter c) will be honoured as well, from the assets that remained after satisfying the claims included in due time within that list.

(7) The payment of subordinated debts shall be performed after the payment of debts of all bank's creditors before the payment of debts of shareholders according to Art. (8).

(8) The remained assets after the payment of all debts to the bank shall be distributed to its shareholders according to their shares.

(9) Claims that were not honored due to insufficiency of bank assets as well as bank obligations, in respect of which the claims were not submitted in due time shall be deemed extinguished.

(10) The liquidator includes in the list of claims the information on honoring/paying off the creditors' claims.

Article 38¹². Reporting. Completion of liquidation process

(1) After the distribution (liquidation) of all bank's assets, the liquidator submits a report to the National Bank. The report should contain information on the value and classes of honored and non-honored creditors' claims, on use of assets, on assets considered non-eligible or assets that have no value, and annexing, if necessary, the justifying documents and other required information. The statement of affairs and other relevant documents of the bank shall be attached to the report.

(2) After the approval of the report, the National Bank and the liquidator will be exempted of any obligation related to the bank's liquidation.

(3) The liquidator shall submit to the state registration body the request to remove the bank from the state register of legal entities and shall carry out other actions required for this purpose following the procedure established by the law.

Article 38¹³. Responsibility of the liquidator

(1) In the event when the liquidator does not observe the present law, the National Bank will relieve him of his position.

(2) The liquidator will be tried for contravention according to law if he commits illegal actions in the process of exercising its attributions.

(3) The disputes arising between the liquidator, the National Bank and other persons with regard to the bank's liquidation shall be settled according to Art, 38 paragraph (7).

Article 38¹⁴. Reopening the liquidation process

(1) If, after the approval of the liquidator's report or erasure of the bank from the state register of legal entities, certain assets of the bank have been identified, the National Bank, at the request of creditors or ex officio, may decide to reopen the process of bank forced liquidation and, if necessary, may appoint a liquidator.

(2) The funds obtained from liquidation (use) of disclosed assets shall be used to honor the claims of the entitled creditors according to the procedure set forth in this law.

(3) In case of appointment, the liquidator shall submit to the National Bank a report on the additionally liquidated (used) assets and on the claims additionally honored.

Chapter VI² VOLUNTARY LIQUIDATION OF THE BANK

Article 38¹⁵. Conditions of voluntary liquidation

(1) Bank's liquidation based on the decision taken by the shareholders (voluntary liquidation) shall be made under the procedure prescribed by the regulations governing the liquidation of companies, taking into account the provisions of this law.

(2) The decision on voluntary liquidation of the bank may be taken by the general meeting of shareholders only in case if the bank is not in a situation of insolvency. The decision of the general meeting of shareholders shall be adopted by the vote of at least two thirds of the total number of votes of the shareholders present at the meeting.

(3) In case of approval of the decision on voluntary liquidation, the bank shall request the National Bank to withdraw the license and issue a permission for voluntary liquidation. The application shall be submitted to the National Bank within five days from the date of adoption of the decision by the general meeting of shareholders. The application shall have enclosed the decision on voluntary liquidation, the liquidation plan approved by the general meeting of shareholders, which shall include the liquidation phases, procedure and terms of satisfying the creditors' claims, the balance sheet that confirms the sufficiency of funds to honor the claims, information on the composition of the liquidation commission (appointed liquidator) and other necessary data.

(4) The National Bank shall examine the application within two months from the date of submitting the required documents and issue permission for voluntary liquidation in case if it finds out that:

a) the decision on voluntary liquidation of the bank was taken according to the legislation,

b) the bank is solvent and may execute without postponing the obligations to creditors;

c) documents submitted contain complete and sufficient information;

d) the proposed plan of liquidation is in the interests of bank creditors;

e) the bank has submitted additional documents requested by the National Bank within the prescribed period, needed to ascertain whether the conditions for issuing the permission are met.

(5) Upon issuance of permission for voluntary liquidation, the National Bank shall withdraw the bank's license.

Article 38¹⁶. Voluntary Liquidation procedure

(1) After withdrawing the license and issuance of the permission for voluntary liquidation, the liquidation commission (liquidator) undertakes all powers over property management and operations of the bank.

(2) The liquidation commission (liquidator) shall:

a) submit, within five days from the date of withdrawal of the license, the application for liquidation of the bank at the state registration body, attaching the necessary documents, including the act of license withdrawal and the permission on the voluntary liquidation of the bank,

b) publish notices regarding the liquidation;

c) conduct an inventory of assets, valuation of assets, honor claims of creditors, and take other necessary measures related to the liquidation of the bank.

(3) The creditors' claims shall be honored in the order of priority of claims classes as follows:

a) costs related to liquidation;

b) the bank employees' salaries for the period up to 3 months preceding the decision on liquidation, alimony, compensation for damage caused by mutilation or by another injury to health or by death,

c) personal deposits;

d) loans provided to the bank, unsecured by pledge;

e) claims referred to in Article 38¹¹, paragraph (3) letters g)-i), in the proper order.

(4) The liquidation commission (liquidator), within 5 days from the date of completion of the liquidation statement of affairs, shall submit it to the National Bank.

(5) The voluntary liquidation of the bank does not prevent initiation of forced liquidation of it if, during the voluntary liquidation process, it is found that the bank is in a state of insolvency.

(6) In case if it is found that the bank is in a state of insolvency, the liquidation commission (liquidator) shall immediately notify the National Bank in order to initiate the process of forced liquidation and submit the report and documents certifying the bank's financial situation.

(7) Within 15 days, the National Bank shall examine the documents submitted under paragraph (6) and, if one of the grounds referred to in paragraph Article 38 paragraph (3) is met, then it shall make the decision stating the insolvency situation of the bank and shall initiate the process of its forced liquidation.

CHAPTER VII FINAL AND TRANSITIONAL PROVISIONS

Article 39. Transitional provisions

(1) Financial institutions that operate as banks at the time that this Law becomes effective shall be deemed to possess a license pursuant to the provisions of this Law.

(2) Applications for bank licenses that are pending on the effective date of this Law shall be returned to the applicants. The applicant will resubmit new applications in accordance with the provisions of this Law.

(3) Within the time period specified by the National Bank, or by regulation or order, all financial institution's financial condition and all operations which do not conform with the requirements of this Law and any regulations issued by the National Bank, shall conform to the requirements of this Law no later than July 1, 1996.

Article 40. Supervision and regulation of the financial institutions' activity

For the purpose of supervision and regulation of the financial institutions activities, the National Bank is empowered to issue such regulations, to control such institutions, to examine such accounts, books, other documents, and to take such other action to give effect to the provisions of this Law.

Article 41. Regulations of the National Bank

All regulations issued by the National Bank pursuant to this Law shall be published in the Official Monitor of the Republic of Moldova and shall take effect on the date of such publication or on such date as such regulation shall specify, provided that the financial institutions are informed.

Article 42. Dispute settlement

The disputes, arising between banks, banks and other persons, as well as between the National Bank and banks are settled by the competent court as prescribed by the legislation.

Article 43. Final dispositions

(1) This Law shall take effect on the date of its publication.

(2) Notwithstanding the provisions of Article 39 (3), the provisions of paragraphs 3 and 4 of Article 38 shall not become mandatory before January 1, 1996.

(3) The regulations issued by the Government shall be within one month put into accordance with the provisions of this Law.

(4) From the date this law takes effect the following are abrogated:

- The law No 601-XII dated June 12, 1991, on Banks and Banking Activity;
- Parliament decree No 602-XII dated June 12, 1991, on the implementation of the law on Banks and Banking Activity;
- The law No 810-XII dated December 18, 1991, on completion of the law on Banks and Banking Activity;
- Parliament decree No 811-XII dated December 18, 1991, on implementation of the law on completion of the Law on Banks and Banking Activity;
- The law No 1233-XII dated December 15, 1992, for the modification and completion of the law on Banks and Banking Activity;
- The law No 166-XIII dated July 1, 1994 for the modification and completion of the law on Banks and Banking Activity;
- Parliament decree No 167-XIII dated July 1, 1994, on the implementation of the law for the modification and completion of the law on Banks and Banking Activity;
- The law No 419-XIII dated March 29, 1995, on completion of the Article 22 from the law on Banks and Banking Activity.

(5) It is suggested to the President of the Republic of Moldova to abrogate the Decree No 36-p dated April 25, 1995, on promulgation of the law for the completion of the

Article 22 from the law on Banks and Banking Activity. [Art. 43 amended by Law No. 249 – XVI of 21.10.2005].

CHAIRMAN OF THE PARLIAMENT

PETRU LUCINSCHI

Chisinau, July 21, 1995

No 550-XIII

Note:

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