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Regulation on calculating voting rights and registering transfer of ownership rights over bank shares, approved by Decision of the Council of Administration of the National Bank of Moldova no 130 of 04.07.2013

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COUNCIL OF ADMINISTRATION
OF THE NATIONAL BANK OF MOLDOVA

DECISION no.130
of July 04, 2013

on the approval of the Regulation on calculating voting rights and registering transfer of ownership rights over bank shares

Pursuant to Article 5, 11 and 44 of the Law on the National Bank of Moldova no 548-XIII of 21 July 1995 (Official Monitor of Republic of Moldova, 1995, no 56-57, Article 624), with further amendments and completions, and Articles 15-15^6 of the Law on Financial Institutions no 550-XIII of 21 July 1995 (republished in the Official Monitor of Republic of Moldova, 2011, no 78-81, Article 199) with further amendments and completions, the Council of Administration of the National Bank of Moldova

DECIDES:

To approve the Regulation on calculating voting rights and registering transfer of ownership rights over bank shares according to the attachment.

Chairman
of the Council of Administration

Dorin DRĂGUŢANU

Attachment
to the Decision of the Council of the Administration
of the National Bank of Moldova
no.130 of July 04, 2013

REGULATION

on calculating voting rights and registering transfer of ownership rights over bank shares

(compiled version with the amendments and completions of the:
Decision of the CE no.25 of 18.02.2016, Official Monitor of the Republic of Moldova no. 100-105 of 15.04.2016;
Decision no 260 of the NBM of 24.10.2018, Official Monitor of the Republic of Moldova no. 430-439 of 23.11.2018, in force as of 23.12.2018)

Chapter I
GENERAL PROVISIONS

1. This regulation establishes the requirements on calculating voting rights and the procedure of registering the transfer of ownership rights over bank shares.

2. The definitions and terms used in this regulation have the meanings set out in the Law no 202/2017 on the activity of banks.
[Paragraph 2 revised by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

3. For the purposes of this Regulation the terms shall have the following meanings:
1) Direct instructions - any instruction sent by the parent company or other person controlled by the parent company, which specifies the way to exercise the voting rights of a person in certain situations.
2) Indirect instruction - any general or particular instruction, regardless of its form, which is sent by the parent company or other person controlled by the parent company, which limits the freedom of another person in the exercise of voting rights to support specific business interests of the parent company or other person controlled by the parent company.
[Paragraph 3 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

Chapter II
CALCULATING VOTING RIGHTS

4. In order to apply the provision of art.45-521 of the Law no 202/2017 on the activity of banks, by determining the amount of a qualifying holding in the share capital of the bank, the calculation of voting rights shall be realized according to the provision of this Chapter.";
[Paragraph 4 revised by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

5. The voting rights shall be calculated based on all voting rights of hold shares, even if the exercise of some or all of the voting rights is suspended or limited. In order to calculate the voting rights, the bank shall make available on their website and media indicated in the bank's bylaws, the information on the total number of issued shares and their associated voting rights within 3 days after an increase or decrease of capital share/number of voting rights was registered. Treasury shares of the bank shall include the total shares constituting the calculation base for determining significant share. As calculation base for determining the amount of a qualifying holding which represents a certain percentage in the share capital of the bank, the share capital of the bank shall be used, including the treasury shares and shares issued under the conditions of Article 521 of the Law no 202/2017 on the activity of banks.";
[Paragraph 5 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

6. The voting rights held by a person (individual or legal entity) shall be calculated based on:
1) voting rights held by a third party in their own name, but in the account of the respective individual or legal entity;
2) voting rights held by or that can be exercised in accordance with paragraph 3)-6) by an entity controlled by the respective individual or legal entity;
3) voting rights held by a third party with which the respective individual or legal entity concluded an agreement, implicitly or explicitly, which oblige both of them to promote a joint policy towards the bank, by exercising their voting rights in concerted manner;
4) voting rights held by a third party with which the respective individual or legal entity concluded an

agreement on the temporary transfer, for onerous purposes, of the respective voting rights;
5) voting rights related to the shares held by the respective individual or legal entity that are constituted as insurance for an obligation, on condition that this person controls the voting rights and intends to exercise them;
6) voting rights related to the shares, the usufruct of which is held by the respective individual or legal entity;
7) voting rights related to shares in possession by the respective individual or legal entity, that can exercise them without any restrictions in the absence of any specific instructions from the owners of the shares;
8) voting rights exercised by the respective individual or legal entity as a proxy, which can be exercised without any restrictions in the absence of any specific instructions from the owners of the shares;
9) voting rights held by a third party, other than the one stipulated in paragraph 2) and 3), which acts in concerted manner with the respective individual or legal entity.
[Paragraph 6 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]
7. The provisions of paragraph 6 shall not be applied:
1) for the persons that carry out custody activities and hold shares as custodians, provided they exercise their voting rights related to these shares only in accordance with the instructions sent in written or electronic form;
2) in case of a purchase or alienation by a market maker of a holding which leads to reaching, exceeding or going under the threshold of the qualifying holding, when it acts as a market maker, provided that it is authorized in accordance with the provisions of the applicable legislation and does not interfere in the management of the activities of the issuer of these shares and does not exercise any influence to purchase such shares or to maintain their price."
[Paragraph 7 amended by Decision no 25 of the NBM of 18.02.2016, in force as of 15.04.2016]
[Paragraph 7 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

8. For the purpose of applying the exception from the consolidation of participations stipulated in paragraph 7, a parent company of an investment trust management company or of an investment company shall observe the following conditions:
1) shall not interfere by providing direct or indirect instructions or by any other means, in the exercise of voting rights held by the respective investment trust management company or investment company;
2) the investment trust management company or investment company must be free to exercise, independently from the parent company, the voting rights for the assets they manage.

9. The provisions of paragraph 5 and 6 shall be applied, as well, when the parent company or any other person controlled by the respective parent company owns holdings that are administered by the investment trust management company or the investment company, and the respective company does not freely exercise the voting rights related to their holdings and, therefore, can exercise the respective rights only after receiving direct or indirect instructions from the parent company or another person controlled by the parent company.

10. A parent company of an investment trust management company or the investment company shall be able to prove upon request that:
1) the organizational structure of the parent company and the investment trust management company or the investment company are of such nature that allows exercising voting rights, independent of the parent company;
2) persons that decide on the way of exercising the voting rights act independently;
3) a clear mandate, in writing is available for a mutual independent relationship between the parent company and the investment trust management company or the investment company in case the parent company is the client of its own investment trust management company or of its own investment company and holds shares in the assets managed by these companies;
The provision of paragraph 1) obliges the parent company and the investment trust management company or the investment company to have written reasonable policies and procedures, meant to prevent the distribution of information between the parent company and the investment trust management company or the investment company regarding the exercise of voting rights.
[Paragraph 10 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

11. For determining a qualified holding, no consideration will be given to the voting rights or shares which the investment companies may hold as a result of underwriting of financial instruments and/or placing the financial instruments based on a firm commitment, undertaken for carrying out the activity, on condition that, on one hand, the voting rights or respective shares shall not be exercised or used for intervention in the bank activity management and, on the other hand, the voting rights or the respective shares shall be alienated within one year from the date of acquisition of qualified holding.
[Paragraph 11 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

Chapter III
REGISTERING THE TRANSFER OF OWNERSHIP RIGHTS OVER BANK SHARES

12. The transfer of ownership rights over bank shares shall be performed as stipulated by the normative acts of the National Commission for Financial Market by observing the peculiarities stipulated in this chapter.
[Paragraph 12 amended by Decision no 25 of the NBM of 18.02.2016, in force as of 15.04.2016]

13. The transfer of ownership rights over bank shares under the conditions stipulated in Article 45 of the Law no 202/2017 on the activity of banks shall be registered only after submitting the written prior approval of the National Bank of Moldova, issued in the conditions of the above mentioned law and in compliance with the provision of paragraph 15 of this regulation.
[Paragraph 13 revised by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

14. Registering the ownership rights over bank shares obtained under Article 46 of the Law no 202/2017 on the activity of banks, related to the objective circumstances set up in the Regulation on the shareholding in the share capital of the bank, shall be performed without the prior approval of the National Bank, under the provisions of paragraph 15 of this Regulation. Subsequently, during the registration of ownership rights, the person keeping the register of securities holders or the person exercising the custody of securities on behalf of the client, shall perform the registration of the suspension of the voting rights.
[Paragraph 14 amended by Decision no 25 of the NBM of 18.02.2016, in force as of 15.04.2016]

[Paragraph 14 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

15. To register the transfer of ownership rights over bank shares, regardless of the holding, the documents submitted to the person that keeps the register of security holders or the person holding the custody of securities on behalf of the client, one shall provide, on a compulsory base, three copies of the declaration on the presence or absence of concerted activity of the individual or legal entity, that intends to acquire a shareholding in the share capital of the bank according to Attachment no 1 or, where appropriate, Attachment no 2 to this Regulation. The declaration shall be signed by the individual or, where appropriate, by the legal representative of the legal entity, who intends to acquire a shareholding in the share capital of the bank, authenticated by the stamp and signature of the person keeping the register of security holders or the person exercising the custody of securities on behalf of the client, who registered the ownership rights over the respective bank's shares. Within 3 days from the date of ownership right registration, the person keeping the register of security holders or the person exercising the custody of securities on behalf of the client, shall send the copies of the declaration, by post, to the National Bank and to the bank issuing the shares. The costs of the sending by post the respective letters and declarations shall be borne by the individual or the legal entity that intends to acquire a shareholding in the share capital of the bank.
[Paragraph 15 revised by Decision no 25 of the NBM of 18.02.2016, in force as of 15.04.2016]

[Paragraph 15 amended by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

16. The transfer of ownership rights over bank shares in the conditions of Article 50 of the Law no 202/2017 on the activity of banks, shall be registered only after submitting the copy of notification of National Bank of Moldova by the shareholder who alienates or reduces the qualifying holding in the share capital of the bank.
[Paragraph 16 supplemented by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

17. Within 3 working days after the date of registering the transfer according to paragraph 16, the shareholder who has notified the National Bank, shall deliver the copy of this notification to the issuing bank.

[Paragraph 17 supplemented by Decision no 260 of the NBM of 24.10.2018, in force as of 23.12.2018]

18. In case of failure to meet the requirements established in paragraph 15 and 16, the transfer of the ownership rights shall not be registered.

Annexes: PDF [1] DOC [2]

See also

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