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16.12.2016

Regulation on banks holding shares in the equity of legal entities

Note: The translation is unofficial, for information purpose only

Published in the Official Monitor of the Republic of Moldova, 16 December 2016, no.441-451, art. 2131

Annex 1
to the Executive Board Decision
of the National Bank of Moldova
no. 330 from December 1, 2016

REGULATION
on Banks Holding Shares
in the Equity of Legal Entities

1. The Regulation establishes the mechanism and rules on holding shares by banks, directly or indirectly, in the equity of resident or non-resident legal entities, other than resident banks.

2. Regulated capital - is determined according to the Regulation on risk weighted capital adequacy approved by the decision of the Administrative Board of the National Bank of Moldova no. 269 from October 17, 2001 (Official Monitor of the Republic of Moldova, 2001, no. 130, Art. 310) and represents the total regulatory capital.

3. Persons acting in concert – are determined in accordance with Article 3 of the Law on financial institutions no.550-XIII from July 21,1995 (republished in the Official Monitor of the Republic of Moldova, 2011 nr.78-81, Art.199).

II. Application

4. No bank, alone or within the group of persons acting in concert, without written permission of the National Bank, shall:
1) hold in the capital of a legal entity, except the banks, in the equity of which the acquisition/ownership of quotas is carried out according to Article 15 of the Law on financial institutions, a quota which:
a) represents 20% or more of the equity of legal entity;
b) exceeds, according to its accounting value, 5% of the regulatory capital of the bank;
2) holds the quotas referred to in sub-item1) with a total accounting value exceeding 50% of the regulatory capital of the bank.

5. Any subsequent increase to obtaining the permission of holding quotas in the equity of legal entities exceeding the limits established by item 4 can be carried out with the written permission of the National Bank in accordance with this Regulation.

6. It is not necessary the permission of the National Bank for the participation quotas in the equity of legal entities transfered into possession / purchased in exchange of debts repayment and / or held temporarily by the bank on its own name, but in the account of other persons.

7. The written permission of the National Bank on holding shares by the bank in the equity of the legal entity shall be obtained before concluding the legal act by which the quota will be acquired in the equity of the legal entity.

8. The banks shall notify the National Bank about any quota held by the bank in the equity of legal entity, about participation quotas in the capital of legal entities transmitted into possession / purchased in exchange for debts reimbursement, as well as about the quotas held by the bank, in the equity of the legal entity, temporarily on its name, but in the account of other persons, by presenting the decision of the authorized organ within 10 days term from the date of making the investment / transmission in possession / purchasing in exchange of debts reimbursement / holding temporary by the bank on its own name, but in the account of others persons.

III. PRESENTATION AND EXAMINATION OF APPLICATION ON HOLDING SHARE BY THE BANK IN THE EQUITY OF LEGAL ENTITY

9. In order to solicit the written permission of the National Bank on holding share in the equity of legal entity in cases referred to in item 4, it is necessary to present an application signed by the chairman of the bank's executive organ by attaching at least the following information / documentation:
1) the decision on holding the share in the equity of the legal entity, taken by the management organ of the bank authorized to take such decision;
2) the name, address, IDNO and the date of registration of the legal entity;
3) the size of equity of the legal entity;
4) the participation quota (in MDL and in %) foreseen for purchase;
5) in case of purchase of shares:
a) the total number of shares issued by the legal entity;
b) the number of shares with voting right issued by the legal entity;
c) the face (fixed) value of a share;
d) the number of shares foreseen for purchase;
e) the purchasing price of shares;
f) the characteristics of purchased shares (ordinary or preferential shares with or without voting rights);
6) the weight of participation quota (according to the face (fixed) value) in the equity of legal entity held at the date of application;
7) the weight of total participation quota in the equity of the legal person (according to accounting value) in the bank's regulatory capital;
8) the weight of the total accounting value of quotas in the equity of legal entities owned by the bank in the regulatory capital of the bank;
9) the purpose of making the investment;
10) economic argumentation made by the bank (which shall include at least the financial analysis of the legal entity, the operations carried out, the rate of return, profitability, solvency) which served as basis for the authorized organ of taking decision to purchase the quota in the equity of the legal entity;
11) the list of shareholders / associations who hold shares representing 20% or more of the legal entity equity, in which the bank intends to hold the share, by indicating the denomination / name, surname of the person, the country of residence, the value and size of the held quota;
12) the list of companies, in which the legal entity holds at least 20% of their equity, indicating the denomination, the country of residence, the value and size of the held quota;
13) the list of administrators of the legal entity, by indicating their functions, names of companies where they perform the duties of administrators (position held) and/or hold quotas in their equity (shall be indicated the size of the held quota in %);
14) the annual financial statements of the legal entity for the last two years (as appropriate depending on the period of activity) undergoing independent auditing or confirmed by the Financial Statements Service, according to the place of registration, in case there has not been foreseen carrying out of audit at the general meeting of shareholders, except for the case when the bank participates in establishing the legal entity.

10. The reason for rejecting the application for granting the written permission regarding holding by the bank of the share in the equity of legal entities are at least one of the following situations:
1) the existence of penalties and of remedial measures referred to in Article 38 paragraph (1), letter f), para.

(2) item 2), item 3) letter b), e), g), k) of the Law on financial institutions and / or the measures of early intervention and the resolution measures stipulated in the Law on bank recovery and resolution no.232 from October 3, 2016 (Official Monitor of the Republic of Moldova, 2016, no. 343-346, Art. 707) applied to the bank during the last twelve months before the date of application;
2) the existence of cases in which the negative consequences of a certain acquisition can influence significantly the financial situation of the bank, including registration by the bank of potential losses; insufficiency of liquidity; failure to respects the value limits of prudential indicators.
11. During 15 working days as of the receipt of the complete set of documents in accordance with item 9, the National Bank approves or rejects the application for soliciting the written permission regarding holding by the bank of the share in the equity of the legal entity.
12. In case the set of documents submitted to the National Bank is not complete and the bank shall not present in due term defined by the National Bank the necessary documents for completing it, the National Bank shall restitute the application for soliciting the written permission on holding the share in the equity of the legal entity without examining it.
13. In case the documents or information presented in accordance with item 9 are insufficient for taking the decision, the National Bank can solicit additional documents and information, can carry out additional investigations, inclusively can consult the public authorities.
14. In case of necessity of soliciting additional documents and information and / or performing certain supplementary investigation by the National Bank, the term defined in item 11 can be extended for a period of up to 15 working days or, by case, suspended for a period of time defined by the National Bank by informing in writing the bank.
15. In case the bank does not present in the term defined by the National Bank the additional documents and information stipulated in item 14, the National Bank shall restitute the application of soliciting the written permission on holding quota in the equity of the legal entity without examining it.
16. The conclusion of the legal act, by which there shall be acquired the quota in the equity of the legal entity shall be performed within maximum 6 months as of the date of issuance of the written permission by the National Bank. Otherwise the permission shall become invalid.

IV. INTERNAL POLICY AND PROCEDURES

17. The bank that holds participation quotas in the equity of legal entities must dispose of internal policies and procedures, which will contain rules and requirements on holding participation quotas in the equity of legal entities in order to follow the provisions of this Regulation, safety of such investments, as well as their efficient management.

18. The policy and procedures shall stipulate at least the following:
1) requirements to be carried out by the clerks responsible for the analysis on holding participation quotas in the equity of legal entities and for submitting recommendations on the appropriateness of holding participation quotas in the equity of legal entities;
2) requirements pertaining to surveys and practices towards the responsible clerks for performing the analysis and for developing recommendations on the appropriateness of investments;
3) methods for managing risks related to holding shares in the capital of legal entities.

19. The Bank shall ensure monitoring the activity and management of legal entities in the equity of which it holds a quota representing 20% and more of the legal entity's equity, shall hold and keep the information / documents stipulated in item 9, sub-items 2), 3), 11), 12), 13), 14).

V. COMPLIANCE AND REPORTING

20. Banks shall submit to the National Bank the report on shares in the equity of legal entities, developed in accordance with the Instruction on the method of preparation and presentation by banks of reports for prudential purposes, approved by the Decision of the Administrative Council of the National Bank of

Moldova no.279 from December 01, 2011 (Official Monitor of the Republic of Moldova, 2011, no. 216-221, Art. 2008).

21. Every six months, the bank shall submit to the National Bank the financial statements of legal entities in which it holds shares representing the equivalent of 20% or more of their capital or if the legal entity is a subsidiary of the bank, as well as the information on "large" exposures of legal entities mentioned, as follows:
1) at the latest by August 15, the financial statements of legal entities for the first half of the year (the balance sheet and statement of profit and loss) prepared in accordance with the relevant standards of accounting without confirmation of the Financial Statements Service of the National Bureau of Statistics (hereinafter Financial Statements Service), except for public interest entities, the financial statements of which shall be confirmed by the Financial Statements Service, as well as the information on "large" exposures of legal entities, prepared in accordance with the Annex to this Regulation;
2) at the latest by the 31st of January following the managed year, the annual financial statements of the legal entities (the balance sheet and the statement of profit and loss) prepared in accordance with relevant accounting standards without confirmation of the Financial Statements Service, as well as the information on "large" exposures of legal entities, prepared in accordance with the Annex to the present Regulation;
3) at the latest by the 15th of May following the managed year, the annual financial statements of legal entities (the balance sheet and the profit and loss statement) prepared in accordance with relevant accounting standards and confirmed by the Financial Statements Service, as well as the information on "large" exposures of legal entities, prepared in accordance with the Annex to this Regulation, in case when the annual financial reports of the legal entities confirmed by the Financial Statements Service differ from the unconfirmed ones, submitted before the 31st of January. In case that the annual financial statements of legal entities confirmed by the Financial Statements Service do not differ from the unconfirmed one, submitted by the 31st of January, the bank, at the latest by the 15th of May following the managed year sends a letter to the National Bank about the fact, that annual financial reports submitted in accordance with sub-item 2) do not differ from those confirmed by the Financial Statements Service.

Annexes PDF [1] Annexes DOC [2]

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