

Parliament of the Republic of Moldova**Law no 232, as of 03.10.2016
On Banks Recovery and Resolution**

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Present organic law is adopted based on provisions of article 106¹ of the Constitution, by assumption of responsibility of the Government.

**TITLE I
General provisions**

Article 1. - (1) The present law lays down rules and procedures relating to the recovery and resolution of the banks acting in the Republic of Moldova.

(2) In exercising its competencies stemming from the present law in its relations with a bank, the National Bank of Moldova refers to the nature of activities conducted, the shareholding structure, risk profile, size, legal status and extent of interconnection of such with the financial system in general, extent and complexity of activity conducted by such as well as the scale of furnishing services or dealing with investment activities, as defined by the provisions set out by the laws on capital market.

Article 2. - For the purpose of the present law the below terms and expressions shall have the following meaning:

1) netting arrangement means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim;

2) set-off arrangement means an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

3) shareholder means holders of shares or holders of other instruments of ownership;

4) affected shareholder means a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in para (1) h) Article 231;

5) resolution action means the decision to place a bank under resolution in compliance with provisions set out in Article 58; the application of a resolution tool, or the exercise of one or more resolution powers;

6) emergency liquidity assistance means the provision by a central bank of central bank money, or any other assistance that may lead to an increase in central bank money, to a solvent financial institution, or group of solvent financial institutions, that is facing temporary liquidity problems, without such an operation being part of monetary policy;

7) competent authority means an authority vested with the competencies with regards to regulation, licensing and prudential oversight of banks pursuant to the provisions set out by the Law no. 202/2017 On Banks Activity;

8) resolution authority means an authority vested with the competencies to apply resolution tools and to exercise resolution competencies pursuant to the provisions of the present law;

- 9) designated national macroprudential authority means the authority entrusted with the conduct of macroprudential policy;
- 10) bank means an entity referred to in Article 3 of the Law no. 202/2017 On Banks Activity;
- 11) bridge bank means a legal person that meets the requirements laid down in Article 111;
- 12) recovery capacity means the capability of an institution to restore its financial position following a significant deterioration;
- 13) own funds requirements means the requirements laid down in the Regulation of the National Bank of Moldova issued according to art. 60 of Law no. 202/2017 On Banks Activity;
- 14) write-down and conversion powers means the powers referred to in Article 220 and para. (1) e)-i) Article 231;
- 15) transfer powers means the powers specified in para (1) (c) or (d) of Article 231 to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;
- 16) financial contracts:
- a) contracts for the purchase, sale or loan of a security, a group or index of securities or options on a security or group or index of securities, repurchase or reverse repurchase transactions on any such security, group or index;
 - b) commodities contracts, including contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery or options on a commodity or group or index of commodities or repurchase or reverse repurchase transactions on any such commodity, group or index;
 - c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
 - d) swap agreements, including swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation or swaps on total return, on credit spread or swap on lending risk or any similar agreements or transactions which is the subject of recurrent dealing in the swaps or derivatives markets;
 - e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
 - f) master agreements for any of the contracts or agreements referred to in points a)-e);
 - g) other contracts and agreements which qualify as financial ones;
- 17) central counterparty means an entity in-between the institutions participants of a system and acting as an exclusive partner of these institutions with regards to their payment/transfer orders;
- 18) affected creditor means a creditor whose claim relates to a liability that is reduced or converted to shares or other instruments of ownership by the exercise of the write down or conversion power pursuant to the use of the bail-in tool;
- 19) systemic crisis means a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy and could be generated by any types of financial intermediaries, markets and infrastructure since any of these could be potentially systemically important to a certain degree;
- 20) eligible liabilities means the liabilities and capital instruments of a bank that do not qualify as basic Tier 1 common equity, additional Tier 1 instruments of own funds, or Tier 2 instruments that are not excluded from the scope of the bail-in tool;
- 21) deposit means deposit according to the definition from the Law On Guaranteeing Deposits of Individuals in the Banking System no. 575-XV from 21.12.2003;
- 22) eligible deposits are deposits which are not included in the category of non-guaranteed deposits according to the Law on Guaranteeing Deposits of Individuals in the Banking System;

- 23) guaranteed deposits are deposits for which the payment amount is within the limit guaranteed by the Law on Guaranteeing Deposits of Individuals in the Banking System;
- 24) recipient means the entity to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from an institution under resolution;
- 25) termination right means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;
- 25¹) own funds – the sum of level 1 own funds and level 2 own funds, as established in the normative acts of the National Bank of Moldova issued according to art. 60 and 61 of Law no. 202/2017 on the activity of banks
- 26) critical functions means activities, services or operations the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution, with particular regard to the substitutability of those activities, services or operations;
- 27) bail-in tool means the mechanism for carrying out the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with articles 151 - 153;
- 28) assets separation tool means a mechanism through which the resolution authority carried out transfers of assets, rights or obligations of a bank subject to resolution to a vehicle of assets administration pursuant to articles 138 - 150;
- 29) sale of business tool means the mechanism for effecting a transfer by a resolution authority of shares or other instruments of ownership issued by an institution under resolution, or assets, rights or liabilities, of an institution under resolution to a purchaser that is not a bridge bank, in accordance with articles 94-109;
- 30) relevant capital instruments pursuant to provisions set out by articles 151-230 means common equity Tier 2 instruments and common equity additional Tier 1 instruments, as per NBM regulations;
- 31) debt instruments referred to in para. (1) g) and j) Article 231 means bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;
- 32) basic common equity Tier 1 instruments – are capital instruments that meet the requirements provided in the normative acts of the National Bank of Moldova issued in application of the provisions of art. 60 and 61 of Law no. 202/2017 On Banks Activity;
- 32¹) additional common equity Tier 1 instruments – are capital instruments that meet the requirements provided in the normative acts of the National Bank of Moldova issued in application of the provisions of art. 60 and 61 of Law no. 202/2017 On Banks Activity;
- 33) common equity Tier 2 instruments – are capital instruments or subordinated loans that meet the requirements provided in the normative acts of the National Bank of Moldova issued in application of the provisions of art. 60 and 61 of Law no. 202/2017 On Banks Activity;
- 34) instruments of ownership means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;
- 35) bridge bank/institution tool means the mechanism for transferring shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of an institution under resolution to a bridge institution, in accordance with articles 110-137;

- 36) investor means any person that has entrusted monetary funds or financial instruments to an investment firm with the purpose of furnishing financial investment services;
- 37) liquidation means disposal of assets of a bank;
- 38) core business lines means business lines and associated services which represent material sources of revenue, profit or franchise value for a bank;
- 39) crisis management measure means a resolution action or the appointment of a special administrator under Article 66 or a person under Article 192 or 259;
- 40) crisis prevention measure means the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 21, the exercise of powers to address or remove impediments to resolvability under articles 35-41, the application of an early intervention measure, the appointment of a temporary administrator or the exercise of the write down or conversion powers in line with provisions of articles 219-230;
- 41) micro, small and medium-sized enterprises means enterprises complying with the definition provided for by Article 2 of the Law on granting support to small and medium size enterprises No. 206-XVI of 07.07.2006;
- 42) secured liability means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or by other actual collateral arrangements or by any other secured means regardless of the legal form in which the secured liability is constituted, including debt arising from repurchasing transactions and other title transfer collateral arrangements;
- 43) bonded liability - liability issued by a bank;
- 44) managing body of a bank - bank's council and executive body;
- 45) regulated market means a regulated market as defined by the legislation with regards to the capital market;
- 46) enforced liquidation of a bank means a procedure of bank liquidation by the National Bank of Moldova as a result of stating of at least one insolvency event referred to in para (3) Article 38 of the Law no. 550/1995 On Banks Liquidation;
- 47) rate of own funds means ratio between the categories of own funds and the total value of risk exposures, as established in the normative acts of the National Bank of Moldova issued in application of art. 60 of Law no. 202/2017 On Banks Activity.
- 48) conversion rate means the factor that determines the number of shares or other instruments of ownership into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim;
- 49) resolution means the application of a resolution tool in order to achieve one or more of the resolution objectives referred to in Article 56.
- 50) extraordinary public financial support means State aid within the meaning of Article 3 of the Law on the State aid No. 159 of 15.06.2012, provided in order to preserve or restore the viability, liquidity or solvency of a bank;
- 51) aggregate amount means the aggregate amount by which the resolution authority has assessed that eligible liabilities are to be written down or converted, in accordance with Article 171;
- 52) asset management vehicle means a legal person that meets the requirements laid down in Article 139.

Article 3 – (1) In the spirit of the present law, the National Bank of Moldova shall be deemed as a competent authority as well as the authority responsible for resolution.

(2) For the purpose of exercising the mandate mentioned in para (1), the National Bank of Moldova shall:

- a) ensure within the frameworks of its internal organization operational independence and avoid conflicts of interest between the functions of supervision carried out by the relevant authority

and the functions of resolution authorities, as well as between the resolution authority and other authorities exercising their competencies pursuant to legal provisions;

b) ensure that each resolution authority has the expertise, resources and operational capacity to apply resolution actions, and is able to exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives;

c) establish for the staff involved in carrying out the functions of the resolution authority pursuant to the present law separate reporting lines and structural separation from the staff involved in carrying out oversight tasks or with regard to exercising other functions as assigned by the National Bank of Moldova;

d) adopt in the spirit of this Article, and make public any necessary relevant internal rules including rules regarding professional secrecy and information exchanges between the different functional areas exercising their functions pursuant to the law;

e) require that authorities exercising supervision and resolution functions in the name and on behalf of the National Bank of Moldova cooperate closely in the preparation, planning and application of resolution decisions.

Article 4 – The National Bank of Moldova, acting as the resolution authority is also the contact authority for ensuring cooperation and coordination of actions with the relevant authorities from other states.

Article 5- The National Bank of Moldova, acting as the resolution authority shall notify the Ministry of Finance on any decisions passed on the grounds of the present law, while in case of decisions having direct fiscal impact the NBM shall obtain approval of the Government prior to implementation of the decision, submitting the relevant request to the Ministry of Finance, pursuant to the provisions of the present law.

Article 6 – (1) Resolution tools are meant to protect public interest in securing financial stability and shall apply whenever necessary for achieving the resolution objectives, accordingly, when a bank cannot be liquidated in compliance with the enforced liquidation proceedings since it could lead to destabilization of the financial system.

(2) In the course of application of resolution instruments and measures the requirements stipulated in the Law on State Aid No. 139 from June 15, 2012 shall not be applicable.

TITLE II Preparation

CHAPTER I Planning Recovery and Resolution

SECTION 1 General Provisions

Article 7 - (1) The banks holding an important share of the national financial system shall prepare their own recovery plans pursuant to articles 9-22 and make the object of certain individual resolution plans pursuant to articles 23-31.

(2) When applying provisions of the present articles an institution/bank shall be considered to constitute a significant share in the national financial system if any of the following conditions are met:

a) the total value of its assets exceeds the level established by the National Bank of Moldova pursuant to the regulations issued by the latter;

b) the ratio of its total assets over the GDP of Moldova exceeds 20 %, unless the total value of its assets is below the ratio established by the National Bank of Moldova pursuant to the regulations issued by the latter.

Article 8 - (1) Through exclusion from the provisions set out by articles 9-31, bearing in mind the elements provided for by para. (2) Article 1, as well as the consideration of the impact of major difficult situation within a bank and enforced liquidation of such could produce onto the financial markets, other banks, conditions of funding as well as onto the economy in ensemble; also the potential significant negative effects generated by the situation of major difficulty within a bank – the National Bank of Moldova as the competent authority and as the resolution authority could establish simplified requirements with regards to recovery and resolution plans of the respective bank having regards to the following:

a) contents and details of the recovery and resolution plans provided for by articles 9-31;

b) the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans which may be lower than that provided for by the present law;

c) the contents and details of the information required from institutions as provided for in para (1) a) and b) Article 13, para. (1) Article 31 and sections A and B of the Annex, which is an integral part of the present law;

d) the level of detail for the assessment of resolvability provided for in articles 32-34 and in section C of the Annex, which is an integral part of the present law.

(2) The assessment of para (1) will be done by the National Bank of Moldova, after consulting, where appropriate, the national macroprudential authority.

(3) The National Bank of Moldova acting as the competent authority, and where appropriate as the resolution authority, could impose at any instance to a bank to which a simplified obligations were applied pursuant to para (1), moving to integral application of the obligations provided for by articles 9-31 while establishing and communicating the term of bank's compliance with the new requirements.

(4) application of simplified obligations referred to in para (1) shall not, per se, affect the competencies of the National Bank of Moldova as the resolution authority and, where relevant, the resolution authority's powers to take a crisis prevention measure or a crisis management measures.

(5) National Bank of Moldova is not obliged to implement the measures envisaged in the recovery and resolution plans and can put in place any other measure or exercise any available competence in order to exercise the attributions of the competent authority of resolution authority, as deemed appropriate.

(6) National Bank of Moldova shall issue regulations in order to implement the provisions of articles 9-31, including with regards to the procedures of drafting and evaluation of recovery and resolution plans.

SECTION 2

Recovery planning

Article 9 - (1) Each bank draws up and maintains a recovery plan providing for measures to be taken by the institution to restore its financial position following a significant deterioration of its financial situation.

(2) Recovery plans shall be considered to be a governance arrangement within the meaning of Article 38 of the Law no. 202/2017 On Banks Activity.

Article 10 - The banks update their recovery plans at least annually or more frequently as requested by the National Bank of Moldova acting as competent authority, and mandatory after a change to the legal or organizational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan.

Article 11 - Recovery plans shall not assume any access to or receipt of extraordinary public financial support.

Article 12 - Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which would be expected to qualify as collateral.

Article 13 - (1) Without prejudice to articles 7-31, the recovery plans shall include the following:

- a) information provided for in section A of the Annex, as well as other information, as per regulations issued by the National Bank of Moldova;
- b). recovery plans should include possible measures which could be taken by the management of the institution where the conditions for early intervention are met as referred to in articles 42 - 44;
- c) recovery plans should include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

(2) Recovery plans should contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups in ensemble.

Article 14 – The National Bank of Moldova acting as a competent authority should have the power to require an institution/bank to maintain detailed records of financial contracts to which the institution concerned is a party.

Article 15- The managing body of the institution shall assess and approve the recovery plan before submitting it to the National Bank of Moldova acting as a competent authority.

Article 16 - (1) Banks required to draw up recovery plans under Article 9 should submit those recovery plans to the National Bank of Moldova acting as a competent authority for review/assessment.

(2) The institutions shall be required to demonstrate to the satisfaction of the competent authority – the National Bank of Moldova that those plans meet the criteria set out in Article 17.

Article 17 - The National Bank of Moldova, within six months of the submission of each plan, shall review it and assess the extent to which it satisfies the requirements laid down in articles 9-15 and the following criteria:

- a) the implementation of the arrangements proposed in the plan is reasonably able to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;
- b) the plan and specific options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

Article 18- When assessing the appropriateness of the recovery plans, pursuant to Article 17, the National Bank of Moldova acting as the competent authority shall take into consideration the appropriateness of the institution's capital and funding structure to the level of complexity of the organizational structure and the risk profile of the institution.

Article 19- (1) The National Bank of Moldova shall provide the recovery plan to the resolution authority.

(2) The National Bank of Moldova acting as the resolution authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the institution and make recommendations to the competent authority with regard to those matters.

Article 20 - (1) Where the National Bank of Moldova acting as the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months from the date of communication of a reviewed plan, extendable with the authorities' approval by one month, a revised plan demonstrating how those deficiencies or impediments are addressed.

(2) At the request filed by the institution/bank, the National Bank of Moldova acting as the competent authority, shall extend the term provided for in para (1) by one month.

(3) Before requiring an institution to resubmit a recovery plan, reviewed pursuant to para. (1), the National Bank of Moldova acting as the competent authority shall give the institution an opportunity to state its opinion on that requirement.

(4) In case when the National Bank of Moldova acting as the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.

Article 21 - (1) If the institution fails to submit a revised recovery plan or the National Bank of Moldova acting as the competent authority, determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the competent authority shall require the institution to identify within a reasonable timeframe changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

(2) the National Bank of Moldova acting as the competent authority shall determine the duration of the period provided for by para (1), case by case, depending on the situation of the institution and on the nature of identified deficiencies.

(3) If the institution fails to identify such changes within the timeframe set by the National Bank of Moldova, pursuant to para (2), or if the competent authority assesses that the actions proposed by the institution would not adequately address the deficiencies or impediments, the competent authority may direct the institution to take one or more measures referred to in para (4) and/or any other measure it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the institution's business.

(4) Apart from measures stipulated in the articles 139 and 141 of Law no. 202/2017 On Banks Activity, National Bank of Moldova acting as a competent authority could impose on the institution to take the following measures:

- a) reduce the risk profile of the institution, including liquidity risk,
- b) enable timely recapitalization measure;
- c) review the institution's strategy and structure;
- d) make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;
- e) make changes to the governance structure of the institution.

Article 22 - (1) Measures imposed to the institutions by the National Bank of Moldova acting as the competent authority, pursuant to para (4) Article 21 shall be proportionate to the gravity of deficiencies and to the scale of obstacles subject to remediation.

(2) Decision of the National Bank of Moldova acting as the competent authority, accompanies by the underpinning motivation of such shall be communicated in writing to the bank and could be appealed on the grounds of provisions set forth by the Law on the National Bank of Moldova No. 548-XIII of 21.07.1995.

SECTION 3

Resolution Plans

Article 23. - (1) the National Bank of Moldova acting as the resolution authority shall draw up a resolution plan for each institution. The National Bank of Moldova should make sure that the structure exercising the resolution function prepares the resolution plan after consulting the supervisory authority.

(2) The resolution plan shall provide for the resolution actions which the National Bank of Moldova acting as the resolution authority may take where the institution meets the conditions for resolution.

(3) The National Bank of Moldova acting as the resolution authority shall disclose the information referred to in Article 29 a) to the concerned institution.

Article 24 - The National Bank of Moldova acting as the resolution authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, in the spirit of para (3) Article 32 as well as the relevant measures for clearing the impediments in compliance with articles 32-41.

Article 25 - (1) The resolution plan shall not assume any of the following When preparing the resolution plan, the National Bank of Moldova acting as the resolution authority, shall take into consideration relevant scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events.

(2) When preparing the resolution plan, the National Bank of Moldova acting as the resolution authority, shall not assume any of the following:

- a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 296;
- b) any central bank emergency liquidity assistance;
- c) any central bank liquidity assistance provided under non-standard collateralization, tenor and interest rate terms.

Article 26 - the National Bank of Moldova acting as the resolution authority shall include in resolution plan an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and shall identify those assets which would be expected to qualify as collateral.

Article 27 – The National Bank of Moldova acting as the resolution authority may require institutions to assist them in the drawing up and updating of the plans.

Article 28 - (1) The National Bank of Moldova acting as the resolution authority, shall review the resolution plans, and where appropriate update them, at least annually and after any material changes to the legal or organizational structure of the institution or to its business or its financial position that, in the opinion of the National Bank of Moldova could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan.

(2) When applying provisions referred to in para (1) the banks shall promptly communicate to the National Bank of Moldova acting as the resolution authority any change that necessitates such a revision or update of the plans. The National Bank of Moldova shall make sure that the structure exercising supervision function communicates promptly to the structure exercising resolution function on any change that could require revaluation or updating of plans.

Article 29 - Without prejudice to Article 7-8, the National Bank of Moldova acting as the resolution authority resolution plan shall set out options for applying the resolution tools and resolution powers referred to in the present law. It shall include, quantified whenever appropriate and possible the following elements:

- a) a summary of the key elements of the plan;
- b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;

- c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
- d) an estimation of the timeframe for executing each material aspect of the plan;
- e) a detailed description of the assessment of resolvability carried out in accordance with Article 24 and articles 32-34;
- f) a description of any measures required pursuant to articles 35-41 to address or remove impediments to resolvability in the spirit of para (3) Article 32, identified as a result of the assessment carried out in accordance with articles 32-34;
- g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
- h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 31 is up to date and at the disposal of the National Bank of Moldova at all times;
- i) an explanation by the National Bank of Moldova acting as the resolution authority as to how the resolution options could be financed without the bank seeking for any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 296, any central bank emergency liquidity assistance; or any central bank liquidity assistance provided under non-standard collateralization, tenor and interest rate terms;
- j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
- k) a description of critical interdependencies;
- l) a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
- m) an analysis of the impact of the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, employer and employees organizations, as appropriate;
- n) a plan for communicating with the media and the public;
- o) the minimum requirement for own funds and eligible liabilities required pursuant to Article 164 and a deadline to reach that level, where applicable;
- p) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 164, and a deadline to reach that level, where applicable;
- q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
- r) where applicable, any opinion expressed by the institution in relation to the resolution plan.

Article 30- (1) Without prejudice to Article 14, the National Bank of Moldova acting as the resolution authority shall have the power to require an institution to maintain detailed records of financial contracts to which it is a party and may specify a time-limit within which the institution is to be capable of producing those records.

(2) The time-limit referred to in para (1) could differ depending on types of financial contracts as referred to in Article 2, same time-limits being applied to all banks.

Article 31 - (1) The National Bank of Moldova acting as the resolution authority shall have the power to require institutions to:

- a) cooperate as much as necessary in the drawing up of resolution plans;
- b) provide them, either directly or through the competent authority, with all of the information necessary to draw up and implement resolution plans, including but not limited to the information and analysis provided for in Section B of the Annex.

(2) The National Bank of Moldova shall ensure that the supervision authorities cooperate with resolution authorities in order to verify whether some or all of the information referred to in

paragraph (1) is already available. Where such information is available, the National Bank of Moldova shall provide that information to the resolution authorities.

CHAPTER II

Resolvability

SECTION 1

General provisions for institution/bank resolution

Article 32 - (1) The National Bank of Moldova acting as the resolution authority assesses the extent to which an institution is resolvable, in the spirit of para. (3) without bearing on the assumption of any of the following:

- a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 296;
- b) any central bank emergency liquidity assistance;
- c) any central bank liquidity assistance provided under non-standard collateralization, tenor and interest rate terms.

(2) The National Bank of Moldova shall ensure that the assessment referred to in paragraph (1) shall take place after the resolution authority has duly consulted the oversight authority.

(3) The National Bank of Moldova acting as the resolution authority considers that an institution is resolvable if in its opinion it is feasible and credible to either liquidate it under forced wind-up proceedings or to resolve it by applying the different resolution tools and powers while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, and with a view to ensuring the continuity of critical functions carried out by the institution.

Article 33 - In the spirit of the assessment of resolvability referred to in Article 32, the National Bank of Moldova acting as the resolution authority shall, as a minimum, examine the matters specified in Section C of the Annex, but also does other evaluations and analysis according to the criteria set by the National Bank of Moldova's regulations.

Article 34 - The National Bank of Moldova acting as the resolution authority shall assess the resolvability under articles 32 and 33 at the same time as and in the spirit of the drawing up and updating of the resolution plan in accordance with Article 23.

SECTION 2

Powers to address or remove impediments to resolvability

Article 35 - (1) If pursuant to an assessment of resolvability for an institution carried out in accordance with articles 32-34, the National Bank of Moldova acting as the resolution authority determines that there are substantive impediments to the resolvability of that institution, the National Bank of Moldova shall notify in writing that determination to the institution concerned.

(2) The National Bank of Moldova shall ensure that the assessment referred to in paragraph (1) is conducted after consulting supervisory authority and in situation when the resolution authority

determines existence of certain substantive impediments to the resolvability of that institution, the National Bank of Moldova shall notify in writing that determination to the supervisory authority.

Article 36 - The requirement for the National Bank of Moldova acting as the resolution authority to draw up resolution plans referred to in Article 23 shall be suspended following the notification referred to in Article 35 until the measures to remove the substantive impediments to resolvability have been accepted by the National Bank of Moldova acting as the resolution authority on the grounds of Article 38.

Article 37 - (1) Within four months of the date of receipt of a notification, the institution shall propose to the National Bank of Moldova acting as the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

(2) The National Bank of Moldova acting as the resolution authority assesses the efficiency of measures proposed by the institution for managing or removal of the substantive impediments in question.

(3) The National Bank of Moldova shall ensure that the assessment referred to in paragraph (2) is conducted after it has duly consulted the supervisory authority.

Article 38 - (1) Where the National Bank of Moldova acting as the resolution authority, assesses that the measures proposed by an institution in accordance with Article 37 do not effectively reduce or remove the impediments in question, shall require through resolution or supervisory authority the institution to take alternative measures that may achieve that objective, and notify in writing those measures to the institution, which shall propose within one month a plan to comply with them.

(2) The National Bank of Moldova acting as the resolution authority shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them.

(3) When establishing the alternative measures, the National Bank of Moldova acting as the resolution authority shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution, its stability and its ability to contribute to the economy.

Article 39 - In the spirit of Article 38, the National Bank of Moldova acting as the resolution authority shall have the power to take any of the following measures:

- a) require the institution to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
- b) require the institution to limit its maximum individual and aggregate exposures;
- c) impose specific or regular additional information requirements relevant for resolution purposes;
- d) require the institution to divest specific assets;
- e) require the institution to limit or cease specific existing or proposed activities;
- f) restrict or prevent the development of new or existing business lines or sale of new or existing products;
- g) require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
- h) require an institution to issue eligible liabilities to meet the requirements of articles 164 - 170;
- i) require an institution to take other steps to meet the minimum requirement for own funds and eligible liabilities under articles 164-170, including in particular to attempt to renegotiate any eligible liability and any Tier 2 instrument it has issued, with a view to ensuring that any decision of the National Bank of Moldova to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.

Article 40 - A decision made pursuant to articles 35 and 38 shall meet the following requirements:

- a) it shall be supported by reasons for the assessment or determination in question;
- b) it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in Article 38;
- c) it shall be subject to a right of appeal with due observance of the provisions set out by the Law on the National Bank of Moldova No. 548-XIII of 21.07.1995.

Article 41 - (1) Before identifying any measure referred to in Article 38, the National Bank of Moldova acting as the resolution authority after consulting if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the particular institution, on the internal market for financial services.

(2) The National Bank of Moldova shall ensure that the activity referred to in paragraph (1) is conducted by the resolution authority after consulting the supervisory authority.

TITLE III **Early Intervention**

CHAPTER I **Early Intervention Measures**

Article 42- (1) Where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, is likely in the near future to infringe the requirements provided for by the Law no. 202/2017 On Banks Activity, and/or Regulations issued by the National Bank of Moldova when applying such, or in case if at least 50% of bank's capital is held by persons who do not have a permission from the National Bank of Moldova if this is required by law, the National Bank of Moldova acting as the resolution authority, along with measures referred to in articles 139 and 141 of Law no. 202/2017 On Banks Activity complete with subsequent changes and amendments, could take, where applicable, at least the following measures:

- a) require the managing body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 10, to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase of the present Article no longer apply;
- b) require the managing body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action program to overcome those problems and a timetable for its implementation;
- c) require the managing body of the institution to convene, or if the managing body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;
- d) require one or more members of the managing body or senior management of the institution to be removed or replaced if those persons are found unfit to perform their duties pursuant to the competencies stipulated by the Law no. 202/2017 On Banks Activity and Regulations of the National Bank of Moldova issued with the view of application of such;
- e) require the managing body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;
- f) require changes to the institution's business strategy;

g) require changes to the legal or operational structures of the institution; and
h) acquire, including through on-site inspections and provide to the National Bank of Moldova acting as the resolution authority all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with articles 72-84.

(2) In the spirit of paragraph (1), rapid deterioration of financial condition of a bank shall be evaluated based on a set of indicators established through National Bank of Moldova's regulations and includes, among others, the deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures.

Article 43 - The National Bank of Moldova shall ensure that the supervisory authority notifies the resolution authorities without delay upon determining that the conditions laid down in paragraph (1) and (2) Article 42 have been met in relation to an institution and that the powers of the National Bank of Moldova acting as the resolution authority include the power to require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in Article 108 and the confidentiality provisions laid down in the present law.

Article 44 - For each of the measures referred to in paragraph (1) Article 42, the National Bank of Moldova acting as the resolution authority, shall set an appropriate deadline for completion, and to enable the competent authority to evaluate the effectiveness of the measure.

CHAPTER II

Replacement of managing body

Article 45 – Where there is a significant deterioration in the financial situation of an institution or where there are serious infringements of law, of regulations or of the statutes of the institution, or serious administrative irregularities, and other measures taken in accordance with articles 42-44 are not sufficient to reverse that deterioration, or in case if at least 50% of bank's capital is held by persons who do not have a permission from the National Bank of Moldova if this is required by law, the National Bank of Moldova, acting as the competent authority, apart from the measures stipulated by articles 139 and 141 of Law no. 202/2017 On Banks Activity, may require the replacement of the managing body of the institution, in its entirety or with regard to individuals, within the term and conditions set forth by the National Bank of Moldova. The managing body members shall be appointed as provided by Law on Joint Stock Companies No. 1134-XIII of 02.04.1997 and the Law no. 202/2017 On Banks Activity and this is subject to the approval by the National Bank of Moldova as the competent authority.

CHAPTER III

Appointment of Temporary Administrator

Article 46 - (1) Where replacement of the managing body as referred to in Article 45 is deemed by the National Bank of Moldova acting as the competent authority to be insufficient to remedy the situation, or in case if at least 50% of bank's capital is held by persons who do not have a permission from the National Bank of Moldova if this is required by law, the National Bank of Moldova acting as the competent authority, apart from the measures stipulated by articles 139 and 141 of Law no. 202/2017 On Banks Activity, may appoint one or more temporary administrators to the institution, among which it could also be the deposits guarantee fund.

(2) The National Bank of Moldova acting as the competent authority shall specify the powers of the temporary administrator at the time of the appointment of the temporary administrator based on what is proportionate in the circumstances. The appointment could imply temporary replacement of the institution's managerial body or temporary cooperation with the institution's management and shall specify the fact in the decision taken at the time of appointment.

(3) Where the National Bank of Moldova, acting as the competent authority, proceeds to appoint temporary administrator to cooperate with the institution's managerial body, it should also specify at the time of appointment the role, functions and competencies enjoyed by the temporary administrator as well as any requirements for the institution's managerial body to consult the temporary administrator or to obtain their consent prior to taking certain decisions or attempting any actions.

(4) The National Bank of Moldova acting as the competent authority, shall publish on its official website information on the appointment of any of the temporary administrators, except where the temporary administrator does not have the power to represent the institution. The National Bank of Moldova shall further ensure that any temporary administrator has the qualifications, ability and knowledge required to carry out his or her functions and is free of any conflict of interests.

Article 47 - (1) The National Bank of Moldova acting as the competent authority, shall specify the powers of the temporary administrator at the time of the appointment of the temporary administrator based on what is proportionate in the circumstances. Such powers may include some or all of the powers of the managing body of the institution under the statutes of the institution and under national law, including the power to exercise some or all of the administrative functions of the managing body of the institution. The powers of the temporary administrator in relation to the institution shall comply with the provisions set forth by the Law on Joint Stock Companies No. 1134-XIII of 02.04.1997 and the Law no. 202/2017 On Banks Activity.

(2) Remuneration of temporary administrator, as appropriate, temporary administrators shall be covered by the institution as established by the National Bank of Moldova acting as the competent authority, bearing in mind institution's remuneration policy developed with due observance of the applicable legal provisions; the overall size of these remunerations cannot exceed the cumulative amount of remuneration paid to the members of the institution's managerial body for the equivalent period of time.

Article 48 - The role and functions of the temporary administrator shall be specified by the National Bank of Moldova acting as the competent authority at the time of appointment and may include ascertaining the financial position of the institution, managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution and taking measures to restore the sound and prudent management of the business of the institution. The National Bank of Moldova acting as the competent authority shall specify any limits on the role and functions of the temporary administrator at the time of appointment.

Article 49 - The National Bank of Moldova acting as the competent authority shall have the exclusive power to appoint and remove any temporary administrator. The National Bank of Moldova acting as the competent authority may remove a temporary administrator at any time and for any reason. The National Bank of Moldova acting as the competent authority may vary the terms of appointment of a temporary administrator at any time subject to provisions referred to in articles 46 - 54.

Article 50 - (1) The National Bank of Moldova acting as the competent authority may require that certain acts of a temporary administrator be subject to its prior consent. The National Bank of Moldova acting as the competent authority shall specify any such requirements at the time of appointment of a temporary administrator or at the time of any variation of the terms of appointment of a temporary administrator.

(2) In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the institution and to set the agenda of such a meeting only with the prior consent of the National Bank of Moldova acting as the competent authority.

Article 51 - The National Bank of Moldova acting as the competent authority may require that a temporary administrator draws up reports on the financial position of the institution and on the acts performed in the course of its appointment, at intervals set by the competent authority and at the end of his or her mandate.

Article 52 - The appointment of a temporary administrator shall not last more than one year. The National Bank of Moldova may, exceptionally, prolong the period of appointment of a temporary administrator, whenever necessary, in case the conditions for the appointment of the temporary Administrator continue to be met. The National Bank of Moldova acting as the competent authority shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to shareholders.

Article 53 – The appointment of a temporary administrator in compliance with provisions set out by articles 46-54 shall be done by way of derogation from the provisions on the appointment and revoking members of the managerial bodies covered by the Law on Joint Stock Companies No. 1134-XIII of 02.04.1997. Appointment pursuant to articles 46-54 shall not inflict any prejudice to other rights of the shareholders provided for by the Law on Joint Stock Companies No. 1134-XIII of 02.04.1997 and the Law no. 202/2017 On Banks Activity.

Article 54 – (1) Provisions set forth by paragraph (1) and (2) Article 35 of the Law on the National Bank of Moldova No. 548-XIII of 21.07.1995 shall apply accordingly to the liability of temporary administrator conferred pursuant to this Law.

(2) While enforcing early intervention measures envisaged in articles 42-53 of this Law, the National Bank of Moldova may absolve, fully or partially, a bank from the obligation to keep the mandatory reserves level.

TITLE IV Resolution

CHAPTER I Objectives, Conditions and General Principles

SECTION 1 Objectives

Article 55 - When applying the resolution tools and exercising the resolution powers, the National Bank of Moldova acting as the resolution authority shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of each case treated separately.

Article 56 - (1) The resolution objectives referred to in Article 55 are:

- a) ensure continuity of critical functions;
- b) prevent a significant negative impact on financial stability, particularly prevent contagion, including of the market infrastructure, and preserve market discipline;

c) protect public funds by reducing to the minimum the dependence on extraordinary public financial support;

d) to protect depositors falling under the incidence of the deposit guarantee legislation;

e) protect the funds and assets of depositors.

(2) When pursuing the objectives referred to in paragraph (1), the National Bank of Moldova acting as the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

Article 57 - Subject to different provisions set out by the present law, the resolution objectives are of equal significance, while the National Bank of Moldova acting as the resolution authority shall balance them as appropriate to the nature and circumstances of each case.

SECTION 2

Conditions for resolution

Article 58 - (1) The National Bank of Moldova acting as the resolution authority shall take a resolution action in relation to an institution only if it considers that all of the following conditions are met:

a) the determination made by the National Bank of Moldova acting as the competent authority that the institution is failing or is likely to fail. To that end, the supervisory authority shall duly consult the resolution authority;

b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by the institutional protection system (IPS), or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments in accordance with Article 220 taken in respect of the institution in question;

c) a resolution action is necessary in the public interest pursuant to provisions set out by Article 60.

(2) The previous adoption of any supervisory measure is not a condition for taking a resolution action.

Article 59 - (1) In the spirit of paragraph (1) (a) Article 58, an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:

a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the National Bank of Moldova acting as the competent authority, including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

b) the assets of the institution are or there are objective elements allowing to the National Bank of Moldova acting as the competent authority to support a determination that the assets of the institution will, in the near future, be less than its liabilities;

c) the institution is or there are objective elements allowing to the National Bank of Moldova acting as the competent authority to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due;

d) extraordinary public financial support is required;

e) at least 50% of bank's capital is held by persons who do not have a permission from the National Bank of Moldova if this is required by law, or when the holdings of at least 50% of the bank's share capital have been cancelled as a result of non-compliance with the shareholding quality requirements set out in the applicable banking legislation at the time of cancellation.

(2) Condition stipulated in paragraph (1) d) shall not be deemed as completed if in order to remedy a serious disturbance in the economy and to preserve financial stability, the extraordinary public financial support takes any of the following forms:

- a) a State guarantee to back the liquidity facilities provided by central banks according to the central banks' conditions;
- b) a State guarantee of newly issued liabilities; or
- c) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in paragraph (1) (a), (b) or (c) nor the circumstances referred to in Article 221 are present at the time the public support is granted.

(3) In each of the cases mentioned in paragraph (2) (a), (b) and (c), the guarantee or equivalent measures referred to therein shall be confined to solvent institutions and shall be conditional on final approval under the state aid framework. Those measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(4) Support measures under paragraph (2) (c) shall be limited to injections necessary to address capital shortfall established in the national stress tests, asset quality reviews or equivalent exercises conducted by the National Bank of Moldova acting as the competent authority.

Article 60 - In the spirit of paragraph (1) Article 58, a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in articles 55-57 while winding up of the institution under forced wind-up proceedings would not meet those resolution objectives to the same extent.

SECTION 3

General Principles Governing Resolution

Article 61 – (1) When applying the resolution tools and, accordingly, exercising the resolution powers, applicable shall be the following principles:

- a) the shareholders of the institution under resolution bear first losses;
- b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under forced bank wind-up proceedings, save as expressly provided otherwise by the present law;
- c) managing body of the institution under resolution is replaced, except in those cases when the retention of the managing body, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;
- d) managing body of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
- e) natural and legal persons are made liable under civil or criminal law for their responsibility for the failure of the institution;
- f) without prejudice to other provisions of this law, creditors in the same category shall be treated equally, except for creditors who are holders of qualified holdings in the bank's share capital, of former shareholders in the bank's share capital, against whom they have measures have been taken in the event of non-compliance with the shareholding quality requirements laid down in the applicable banking legislation at the time of cancellation and whose claim for cancellation of the shares has not been honoured, members of the bank's management body as well as affiliated persons to this category of persons, as determined in Law no. 202/2017 On Banks Activity;

g) no creditor shall incur greater losses than would have been incurred if the institution had been wound up under forced wind-up proceedings in accordance with the safeguards provided for in articles 262-266;

h) covered deposits are fully protected; and

i) resolution action is taken in accordance with the safeguards provided for by the present law.

1¹) when applying the provisions of paragraph (1), point f), the temporary administrator and the special administrator assigned by the National Bank of Moldova under Article 45 and, respectively, Article 66 are not considered members of the bank's governing body.

(2) In exceptional circumstances the National Bank of Moldova, as resolution authority, may apply differentiated treatment towards the creditors from the same class, fully or partially, in cases when it concludes that:

a) equal treatment is not possible over a reasonable term, in spite of the good-willed efforts taken by the National Bank of Moldova, as resolution authority;

b) differentiated treatment is strictly needed and is proportional for obtaining the continuity of critical functions and essential activity lines in manner that would maintain the capacity of the bank subject to resolution to continue its key operations, services and transactions;

c) differentiated treatment is strictly needed and is proportional for avoiding a massive scale contamination, which could gravely affect the functioning of financial markets, and financial market infrastructures, in a way that could lead to a grave destabilization of Moldova's economy; or

d) equal treatment in case of the said creditors would generate a loss of value that would lead to a higher amount of losses born by other creditors, as compared with the situation when these creditors would have been treated in a differentiated manner.

Article 62 - (1) When applying the resolution tools and exercising the resolution powers, the National Bank of Moldova may absolve, fully or partially, a bank from the obligation to keep the mandatory reserves level.

(2) Without affecting the article 18 of the Law on National Bank of Moldova, financing or issuance of guarantees by the National Bank of Moldova acting as the resolution authority shall be banned.

Article 63 – When one of the resolution tools is being applied to an institution, selling business, the setting up of a bridge institution, separation of performing assets in that part which concerns treatment of employees, applicable shall be the relevant provisions of Labor Code.

Article 64 – When applying the resolution tools and exercising the resolution powers, the National Bank of Moldova, acting as the resolution authority shall inform and consult employee representatives where appropriate.

Article 65 - The National Bank of Moldova acting as the resolution authority shall apply resolution tools and exercise its resolution powers without prejudice to provisions on the representation of employees in management bodies as provided for in national practice.

CHAPTER II

Special management

Article 66 - the National Bank of Moldova acting as the resolution authority shall appoint a special administrator to replace the managing body of the bank under resolution, in which case his/her appointment is made public on its website. The special administrator shall have the qualifications, knowledge and ability required to carry out his or her functions.

Article 67 - the special administrator has all powers of the general shareholder assembly and of the governing body of the said bank. However, the special administrator may only exercise such powers under the control of the National Bank of Moldova, in its capacity of resolution authority.

Article 68 - The special administrator shall have the duty to take all the measures necessary to promote the resolution objectives referred to in articles 55-57 and implement resolution actions according to the decision of the National Bank of Moldova, in its capacity of resolution authority. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the bank or national law, insofar as they are inconsistent. Those measures may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound in accordance with the resolution tools referred to in this Law.

Article 69 - The National Bank of Moldova, in its capacity of resolution authority, may set limits to the action of a special administrator or require that certain acts of the special administrator be subject to its prior consent. The National Bank of Moldova, in its capacity of resolution authority, may replace the special administrator at any time.

Article 70 - The special administrator shall draw up and submit reports to the National Bank of Moldova, in its capacity of resolution authority, on the economic and financial situation of the bank to which he/she was assigned as special administrator, and on the acts performed in the conduct of his or her duties, at regular intervals set by the resolution authority and at the beginning and the end of his or her mandate.

Article 71 - (1) A special administrator shall not be appointed for more than one year. That period may be renewed by periods of up to one year, on an exceptional basis, if the National Bank of Moldova, in its capacity of resolution authority, determines that the conditions for appointment of a special administrator continue to be met.

(2) The provisions of paragraph (2) Article 47 shall apply accordingly.

(3) Provisions set forth by paragraphs (1) and (2) of Article 35 of the Law on the National Bank of Moldova No. 548-XIII of 21.07.1995 shall apply accordingly to the liability of the special administrator for acting as empowered by this Law..

CHAPTER III Valuation

Article 72 - Before taking resolution action or exercising the power to write down or convert relevant capital instruments, for a bank, the National Bank of Moldova, in its capacity of resolution authority, shall ensure that a fair, prudent and realistic valuation of the assets, liabilities and own capitals of the bank is carried out by a person independent from any public authority, including the National Bank of Moldova and the bank. Subject to Article 84 and articles 292 to 294, where all the requirements laid down in this Article and in articles 73 to 83 are met, the valuation shall be considered to be definitive.

Article 73 - Whenever an independent valuation according to Article 72 is not possible, the National Bank of Moldova, in its capacity of resolution authority, may perform a provisional assessment of the assets, liabilities and equity of the bank, in line with Article 80.

Article 74 - The goal of the provisional assessment shall be to determine the value of the assets, liabilities and equity of the bank that meets the conditions for resolution referred to in articles 58 to 60.

Article 75 - The purposes of the valuation shall be:

a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of relevant capital instruments are met;

- b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the bank;
- c) when the power to write down or convert relevant capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments;
- d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;
- e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the bank under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the understanding of the National Bank of Moldova, in its capacity of resolution authority, of what constitutes commercial terms in the spirit of articles 94 to 106;
- g) in all cases, to ensure that any losses on the assets of the bank are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.

Article 76 - Evaluation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the bank from the point at which resolution action is taken or the power to write down or convert relevant capital instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

- a) The National Bank of Moldova, in its capacity of resolution authority, and the Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, may recover any reasonable justified expenses from the bank(s) under resolution, as referred to in Article 91;
- b) The Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, may charge interest or fees in respect of any loans or guarantees provided to the bank under resolution.

Article 77 - The valuation shall be supplemented by the following information as appearing in the accounting books and records of the bank:

- a) an up-to-date balance sheet and a report on the financial position of the bank;
- b) an analysis and an estimate of the accounting value of the assets;
- c) a list of the balance sheet and off-balance-sheet liabilities on the records and books of the bank, specifying the liabilities and priority levels, as provided by relevant legislation on forced liquidation of banks.

Article 78. - Where appropriate, to inform the decisions referred to in letters e) and f) of Article 75, the information in point b) of Article 77 may be complemented by an analysis and estimate of the value of the assets, liabilities and equity of the bank on a market value basis.

Article 79. - (1) The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable bank insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the bank were wound up under forced wind-up proceedings.

(2) That estimate shall not affect the application of the ‘no creditor worse off’ principle to be carried out under articles 263 to 265.

Article 80 - (1) Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements in Article 77 and Article 79 or Article 73 applies, a provisional

valuation shall be carried out. The provisional valuation shall comply with the requirements in Article 74 and in so far as reasonably practicable in the circumstances with the requirements of articles 72, 77 and 79. In such cases market value of performing consumer loans which have a service record would be considered their books value.

(2) The provisional valuation referred to in paragraph (1) shall include a buffer for additional losses, with appropriate justification.

Article 81 - (1) A valuation that does not comply with all the requirements laid down in articles 72-84 shall be considered to be provisional until an independent person has carried out a valuation that is fully compliant with all the requirements laid down in articles 72-84. That ex-post definitive valuation shall be carried out as soon as practicable. It is to be clearly distinguished from the valuation referred to in articles 263-265, irrespective whether it is carried out at the same time or by the same independent person.

(2) The final ex-post assessment shall be conducted to meet a number of goals:

a) to make sure that any losses related to the assets of the bank are fully recognized in the accounting books;

b) to contribute to the justification of the decision to readjust the receivables of the creditors or increase the amount of the considerations paid, as specified in Article 82.

Article 82 - In the event that the ex-post definitive valuation's estimate of the net asset value of the bank is higher than the provisional valuation's estimate of the net asset value, the National Bank of Moldova, in its capacity of resolution authority, may:

a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;

b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the bank under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.

Article 83 - Notwithstanding Article 72, a provisional valuation conducted in accordance with articles 80 and 81 shall be a valid basis for the National Bank of Moldova, in its capacity of resolution authority, to take resolution actions, including taking control of a failing bank or to exercise the write down or conversion power of capital instruments.

Article 84 - The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of relevant capital instruments. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with articles 292-294.

CHAPTER IV

Resolution tools

SECTION 1

General principles

Article 85 - The National Bank of Moldova, in its capacity of resolution authority, is empowered to apply resolution tools to the banks that meet the conditions for resolution.

Article 86- Where the National Bank of Moldova, in its capacity of resolution authority, decides to apply a resolution tool to a bank and that resolution action would result in losses being borne by creditors or their claims being converted, the National Bank of Moldova, in its capacity of resolution

authority, shall exercise the power to write down and convert capital instruments in accordance with articles 219 to 225, immediately before or together with the application of the resolution tool.

Article 87 - The resolution tools referred to in Article 85 are:

- a) sale of business;
- b) bridge bank;
- c) asset separation;
- d) bail-in.

Article 88 - While complying with Article 89, the National Bank of Moldova, in its capacity of resolution authority, may apply resolution tools individually or in any combination.

Article 89 - The National Bank of Moldova, in its capacity of resolution authority, may apply the asset separation tool only together with another resolution tool.

Article 90 - Where only the resolution tools referred to at the letters a) or b) of Article 87 are used, and they are used to transfer only part of the assets, rights or liabilities of the bank under resolution, the residual bank from which the assets, rights or liabilities have been transferred, shall be wound up under the forced bank wind-up proceedings.

Article 91 - The National Bank of Moldova, in its capacity of resolution authority, and the Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, acting pursuant to Article 301 and 302 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools in one or more of the following ways:

- a) as a deduction from any consideration paid by a recipient to the bank under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- b) from the bank under resolution, as a preferred creditor;
- c) from any proceeds generated as a result of the termination of the operation of the bridge bank or the asset management vehicle, as a preferred creditor.

(2) When a bank is wound up by force, the receivables of the National Bank of Moldova, in its capacity of resolution authority, and of the Bank Deposit Guarantee Fund accordingly, resulting from the expenses referred to in paragraph (1), are treated as receivables of the same rank as those arisen from the expenses connected with winding up.

Article 92 - In the very extraordinary situation of a systemic crisis, the National Bank of Moldova, in its capacity of resolution authority, may seek funding from alternative financing sources through the use of government stabilisation tools provided for in articles 213 to 218 when the following condition is met:

a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of total liabilities including own funds of the bank, measured at the time of resolution action in accordance with the valuation provided for in articles 72 to 84, has been made by the shareholders and the holders of other instruments of ownership, as well as the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise.

Article 93 - (1) Legal provisions relating to the cancellation or unenforceability of legal acts detrimental to creditors do not apply to transfers of assets, rights or liabilities from a bank under resolution to another entity by virtue of the application of a resolution tool or exercise of a resolution power, or use of a government financial stabilisation tool.

(2) The provisions of art. 15 (6) bullet b), art. 25 (11), art. 27 (1)-(5), art. 32 (1), (5), art. 37, art. 38 (1), bullet f), art. 39 (6) bullets a), b), c), d), art. 41(2), (3), (5), (6), (7), art. 42 (1), (2), art. 43, art. 45, art. 50 (3) bullets a), k), art. 61 (2), art. 93, art. 94, art. 95, art. 56, art. 74 of the Law 1134-XIII dated April 2, 1997 on Joint Stock Companies, of art.74; art.72, art.74, art.75, art.77, art.78, art.79, art.80, art.84, art.110, art.111, art.158 (5) of the Civil Code no. 1107-XV dated June 6, 2002, of art. 16 (1),(2), art. 20 (1), art. 21.(1), art.22 (2)-(6) of the Law on State Registration of Legal Entities and

Individual Entrepreneurs no. 220 dated October 19, 2007 - do not apply when resolution tools, powers and arrangements referred to in articles 85-295 are used.

(3) The part of the bank sale contract or of the contract on giving over the bank's assets and liabilities shall be exempt from any taxes and fees related to such contracts, charged for making entries in public records and for services provided by public authorities.

SECTION 2

The sale of business tool

Article 94 - (1) the National Bank of Moldova acting as the resolution authority, is empowered to transfer to a purchaser that is not a bridge bank:

- a) shares or other instruments of ownership issued by a bank under resolution;
- b) all or any assets, rights or liabilities of a bank under resolution;

(2) Complying with articles 101, 102 and Article 292 to 294, the transfer specified at paragraph (1) shall take place without the endorsement of the shareholders of the bank under resolution or any third party, other than the purchaser, and shall not be subject to any procedural requirement specified by the relevant legislation regulating businesses or capital markets, except for those specified in articles 107 to 109, while the provisions of Article 232 apply.

Article 95 - A transfer made pursuant to Article 94 shall be made on commercial terms, having regard to the circumstances.

Article 96 - In the spirit of Article 95, the National Bank of Moldova, in its capacity of resolution authority, shall take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted under articles 72-84, having regard to the circumstances of the case. With a view of financing or guaranteeing the transfer envisaged by articles 94 and 98, Government has the right to decide on the issuance of state guarantees and state securities by the Ministry of Finance.

Article 97 - Complying with Article 91, any consideration shall be paid by the purchaser to the benefit of:

- a) the owners of the shares or other instruments of ownership, where the sale of business has been effected by transferring shares or instruments of ownership issued by the bank under resolution from the holders of those shares or instruments to the purchaser;
- b) the bank under resolution, where the sale of business has been effected by transferring some or all of the assets, rights or liabilities of the banks under resolution to the purchaser.

Article 98 - When applying the sale of business tool the National Bank of Moldova, in its capacity of resolution authority, may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by a bank under resolution or, as the case may be, assets, rights or liabilities of the bank under resolution.

Article 99 - Following an application of the sale of business tool, the National Bank of Moldova, in its capacity of resolution authority, may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the bank under resolution, or the shares or other instruments of ownership back to their original owners, and the bank under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

Article 100 - A purchaser shall meet the legal conditions for carrying out the business acquired through transfer when the transfer is made pursuant to Article 94. When the National Bank of Moldova is the purchaser's competent authority, it shall review an application for licensing to this end, alongside the transfer, in a timely manner.

Article 101 - By derogation from articles 45-48, art. 50 and 51 of Law no. 202/2017 On Banks Activity when a transfer of shares or another instrument of ownership due to the use of the sale of business tool would result in the purchase or increase of the stock in the share capital of a bank, so that paragraph (1) of article 45 paragraph (1) of Law no. 202/2017 On Banks Activity would apply, the National Bank of Moldova, in its capacity of the bank's competent authority shall conduct the required valuation to allow for prompt use of the sale of business tool and facilitate de relevant resolution objectives via the resolution action taken.

Article 102 - (1) If the supervisory authority has not completed the valuation of the purchase, from the date of transfer of shares or other instruments of ownership with regard to the application of the sale of business tool by the resolution authority the following provisions shall apply:

a) such a transfer of shares or other instruments of ownership to the purchaser shall have immediate legal effect;

b) during the purchase valuation period and any period during which the divestiture of shares or other instruments of ownership was required, according to paragraph (2), letter b), the voting rights of the purchaser shall be suspended and be made available only to the National Bank of Moldova, in its capacity of resolution authority, which has no obligation to make use of the voting rights and is not accountable for making or not making use of them;

c) during the purchase valuation period and any period during which the divestiture of shares or other instruments of ownership was required, according to paragraph (2), letter b), the legal effects, including penalties specified in the Law no. 202/2017 on the activity of banks for failure to comply with the requirements regarding the requesting of the prior endorsement of the National Bank of Moldova for purchasing stocks in the share capital of a bank, hence regarding the notification on selling or decreasing shares owned in the share capital of a bank, do not apply to such transfers of shares or other instruments of ownership;

d) The National Bank of Moldova shall ensure that immediately after the completion of the purchase valuation the supervisory authority grants to the purchaser its prior endorsement or the decides on refusing the endorsement, in line with article 47 paragraphs (7) or (8), as the case may be, from Law no. 202/2017 On Banks Activity, as well as shall inform about it the resolution authority.

e) Where the National Bank of Moldova, in its capacity of competent authority, approves the purchase, the voting rights for the shares or other instruments of ownership that were the object of the transfer to the purchaser shall be considered granted entirely to the purchaser immediately after the purchaser get the prior endorsement;

f) When the National Bank of Moldova, in its capacity of competent authority, refuses the prior endorsement, paragraph (2) shall apply.

(2) For the situations referred to at the letter f) of paragraph (1) the following apply:

a) the voting rights attached to such shares or other instruments of ownership as provided by paragraph (1), letter b) shall remain in full force and effect;

b) the National Bank of Moldova, in its capacity of resolution authority, may require the purchaser to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and

c) when the purchaser does not complete the divestiture within the term specified at the letter b), the provisions related to non-compliance with the requirements regarding the quality of shareholding provided in the applicable banking legislation at the time of cancellation become incident.

Article 103 - Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in articles 262 to 276.

Article 104 - The purchaser shall be considered to be a lawful continuation of the bank under resolution, and be able to continue to exercise any right that was exercised by the bank under

resolution in respect of the assets, rights or liabilities transferred, including with regards to the intellectual property rights.

Article 105 - (1) The purchaser may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the bank under resolution, as having the quality of member and rights of access to such systems, stock exchanges or schemes.

(2) The provisions of paragraph (1) do not dismiss the requirement that the purchaser meets membership and participation criteria, which allows for participation in such systems, stock exchanges and schemes.

(3) Notwithstanding paragraph (1), the following provisions shall apply:

a) the systems, stock exchanges and schemes referred to in paragraph (1) may not deny access on the ground that the purchaser does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the paragraph (1);

b) where the purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in paragraph (1) may be exercised by the purchaser for a period of time as may be specified by the National Bank of Moldova, in its capacity of resolution authority, not exceeding 24 months from the day of transfer, renewable by 12 months at most on application by the purchaser to the resolution authority.

Article 106 - Without prejudice to articles 262-276, the shareholders or creditors of the bank under resolution and other third parties whose assets, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, rights or liabilities transferred.

Article 107- Subject to Article 109, when applying the sale of business tool, the National Bank of Moldova, in its capacity of resolution authority, shall market, or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership that the authority intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.

Article 108 - (1) The sale on the market referred to in Article 107 shall be carried out in accordance with the following criteria:

a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership that the National Bank of Moldova, in its capacity of resolution authority, intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;

b) it shall not unduly favour or discriminate between potential purchasers;

c) it shall be free from any conflict of interest;

d) it shall not confer any unfair advantage on a potential purchaser;

e) it shall take account of the need to effect a rapid resolution action;

f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

(2) Complying with the principle specified at the letter b) of paragraph (1), the other principles referred to in paragraph (1) shall not interfere with the right of the National Bank of Moldova, in its capacity of resolution authority, to contact potential purchasers individually.

Article 109 - The National Bank of Moldova, in its capacity of resolution authority, may apply the sale of business tool without complying with the requirement to market as laid down in Article 107 when it determines that compliance with the requirements of Article 108 would be likely to undermine one or more of the resolution objectives and in particular if the following conditions are met:

a) The National Bank of Moldova, in its capacity of resolution authority, shall consider that the actual or likely failure of the bank under resolution would cause or worsen the already grave threat to financial stability; and

b) The National Bank of Moldova, in its capacity of resolution authority, considers that compliance with the requirements in Article 108 would be likely to undermine the effectiveness of the sale of business tool in addressing the threat to financial stability or achieving the resolution objective referred to at the letter b) of paragraph (1) of Article 56.

SECTION 3

The bridge bank tool

Article 110 - (1) The National Bank of Moldova, in its capacity of resolution authority, is empowered to transfer to a bridge bank:

- a) shares or other instruments of ownership issued by one or several banks under resolution;
- b) all or any assets, rights or liabilities of one or several banks under resolution;

(2) Complying with articles 292 to 294, the transfer specified at paragraph (1) may take place without the endorsement of the shareholders of the bank under resolution or any third party, other than the bridge bank, and shall not be subject to any procedural requirement specified by the relevant legislation regulating businesses or capital markets, while the provisions of Article 232 apply.

Article 111 - (1) The bridge bank shall be a legal person that meets all of the following requirements:

- a) the share capital is held by the Ministry of Finance and the bridge bank is entirely controlled by the National Bank of Moldova, in its capacity of resolution authority, in the spirit of Article 231, paragraph (1), letter b) and, in particular, taking account of Article 122, paragraph (1);
- b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by a bank under resolution or some or all of the assets, rights and liabilities of one or more banks under resolution with a view to maintaining access to critical functions and selling the bank.

(2) The application of the bail-in tool for the purpose referred to at the letter b) of Article 152 shall not interfere with the ability of the National Bank of Moldova, in its capacity of resolution authority, to control the bridge bank.

Article 112 - When applying the bridge bank tool, the National Bank of Moldova, in its capacity of resolution authority, shall ensure that the total value of liabilities transferred to the bridge bank does not exceed the total value of the rights and assets transferred from the bank under resolution or provided by other sources. In order to ensure the condition set in this article, Government has the right to decide on the issuance by the Ministry of Finance of state guarantees, state securities and conversion of bridge bank's debts towards the state into capital, with the purpose of ensuring a balance between bridge bank's assets and liabilities.

Article 113 - Complying with Article 91, any consideration shall be paid by the bridge bank to the benefit of:

- a) the owners of the shares or other instruments of ownership, where the transfer to has been effected by transferring shares or instruments of ownership issued by the bank under resolution from the holders of those shares or instruments to the bridge bank;
- b) the bank under resolution, where the transfer has been effected by transferring some or all of the assets, rights or liabilities of the bank under resolution to the bridge bank.

Article 114 - When applying the bridge bank tool the National Bank of Moldova, in its capacity of resolution authority, may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by a bank under resolution or, as the case may be, assets, rights or liabilities of the bank under resolution.

Article 115 - Pursuant to using the bridge bank tool, the National Bank of Moldova, in its capacity of resolution authority, may:

a) transfer rights, assets or liabilities back from the bridge bank to the bank under resolution, or the shares or other instruments of ownership back to their original owners, and the bank under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions laid down in Article 116 are met;

b) transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge bank to a third party.

Article 116 - (1) the National Bank of Moldova acting as the resolution authority, may transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge bank in one of the following circumstances:

a) the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the decision to use the bridge bank instrument, by which the transfer was made;

b) the shares or other instruments of ownership, assets, rights or liabilities do not meet the transfer conditions or do not fall within the classes of shares or other instruments of ownership, assets, rights or liabilities specified in the decision referred to at the letter a).

(2) Such transfer back may be made within any period, and shall comply with any other conditions, stated in the decision to apply the bridge bank instrument for the purpose of performing the transfer.

Article 117 - Transfers between the bank under resolution, or the original owners of shares or other instruments of ownership, on the one hand, and the bridge bank on the other, shall be subject to the safeguards referred to in articles 262 to 276.

Article 118 - The National Bank of Moldova, in its capacity of resolution authority, may require that a bridge bank be considered to be a continuation of the bank under resolution, and be able to continue to exercise any right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred, including with regards to the intellectual property rights.

Article 119 - (1) The bridge bank may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the bank under resolution, as having the quality of member and rights of access to such systems, stock exchanges or schemes.

(2) The provisions of paragraph (1) do not dismiss the requirement that the bridge bank meets membership and participation criteria, which allows for participation in such systems, stock exchanges and schemes.

(3) Notwithstanding paragraph (1), the following provisions shall apply:

a) the systems, stock exchanges and schemes referred to in paragraph (1) may not deny access on the ground that the bridge bank does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the paragraph (1);

b) where the bridge bank does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in paragraph (1) are exercised by the bridge bank for a period of time as may be specified by the National Bank of Moldova, in its capacity of resolution

authority, not exceeding 24 months from the day of transfer, renewable by 12 months at most on application by the bridge bank to the resolution authority.

Article 120 - Without prejudice to articles 262-276, the shareholders or creditors of the bank under resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge bank shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge bank, to its managing body or related to it.

Article 121 - The objectives of the bridge bank do not imply any obligation or responsibility of the bridge bank with regard to the shareholders, creditors of the bank under resolution, and the managing body is not required to report to the shareholders or creditors, or any other person, regarding the actions taken and omissions made while performing their duties, except for the cases when the actions or omissions imply grave ill-will or negligence in accordance with the law that affects directly the rights of such shareholders, creditors or other persons.

Article 122 - (1) The operation of a bridge bank shall respect the following requirements:

a) the contents of the bridge bank constitutional documents are approved by the National Bank of Moldova, in its capacity of resolution authority;

b) the supervisory board of the bridge bank shall have 2 members, selected by the National Bank of Moldova and 1 member selected by the Ministry of Finance;

c) the supervisory board of the bridge bank proceeds to appoint its executive body;

d) the National Bank of Moldova, in its capacity of resolution authority, approves the managing body of the bridge bank, approves the remunerations of the managing body and specifies their responsibilities;

e) The National Bank of Moldova, in its capacity of resolution authority, shall approve the strategy and risk profile of the bridge bank;

f) the bridge bank shall be licensed as provided by the Law no. 202/2017 On Banks Activity, the regulations issued by the National Bank of Moldova in the spirit of enforcing the LFI and the capital market legal framework, when the requirement applies, and shall hold the necessary licenses and authorizations for carrying out the activities or providing the services related to the components taken over via a transfer conducted in line with articles 231 and 232;

g) the bridge bank shall meet the requirements of the Law no. 202/2017 On Banks Activity, of the regulations issued by the National Bank of Moldova in the spirit of enforcing the LFI and shall be subject to supervision as required by the provisions thereof;

h) National Bank of Moldova, in its capacity of resolution authority, may specify restrictions on bridge bank's operations accordingly;

i) bridge bank's decision to accept the realization of the transfer stipulated in para (1) of article 110 shall be approved by its managing body.

(2) When it is necessary for achieving the resolution objectives, the bridge bank may be established and licensed without it meeting, for a period of maximum 18 months, at the beginning of its operation, the requirements regarding the own funds and, for a period of maximum 6 months, other requirements included in the normative acts provided in paragraph (1) points f) and g), using the subsequent increases of own funds, as the case may be, as a basis for the calculation of the respective prudential indicators.

To that end, the division of the National Ban of Moldova in charge of resolution shall send a request to the division in charge of supervision or to the National Commission for Financial Market, depending on the situation. If the National Bank of Moldova, in its capacity of competent authority, or the National Commission for Financial Market, depending on the situation, decides to grant such a license, it shall indicate the period for which the bridge institution is waived from complying with the requirements of those legal provisions.

(3) The managing body of the bridge-bank must ensure a professional and market based administration of the respective bank.

Article 123 - Subject to any restrictions imposed in accordance with competition rules, the management of the bridge bank shall operate the bridge bank with a view to maintaining access to critical functions and selling the bank, its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate on the opinion of the National Bank of Moldova, in its capacity of resolution authority, within the period specified in Article 126 or 127, as applicable.

Article 124 - The National Bank of Moldova, in its capacity of resolution authority, shall take a decision that the bridge bank is no longer a bridge bank within the meaning of Article 111 in any of the following cases, whichever occurs first:

- a) the bridge bank merges with another bank;
- b) the bridge bank no longer meets the requirements of Article 111;
- c) the bridge bank sells all or almost all assets, rights or liabilities of the bridge bank to a third party;
- d) the expiry of the period specified in Article 126 or, where applicable, Article 127;
- e) the bridge bank's assets are completely wound down and its liabilities are completely discharged.

Article 125 - (1) When the National Bank of Moldova, in its capacity of resolution authority, seeks to sell the bridge bank or its relevant assets, rights or liabilities, it shall ensure that the bridge bank or the relevant assets or liabilities are marketed openly and transparently, and that the sale does not materially misrepresent them or unduly favour or discriminate between potential purchasers.

(2) Any such sale shall be made on commercial terms, having regard to the circumstances.

Article 126 - If none of the outcomes referred to at the letters a) to c) of Article 124 applies, the National Bank of Moldova, in its capacity of resolution authority, shall take action to terminate the status of the bridge bank as soon as possible, according to its own assessment, and in any event two years after the date on which the last transfer from a bank under resolution pursuant to the bridge bank tool was made.

Article 127 - The National Bank of Moldova, in its capacity of resolution authority, may extend the period referred to in Article 126 for one or more additional one-year periods where such an extension:

- a) supports the outcomes referred to at the letters a)-c) or e) of Article 124; or
- b) is necessary to ensure the continuity of essential banking and/or financial services.

Article 128 - Any decision of the National Bank of Moldova, in its capacity of resolution authority, to extend the period referred to in Article 126 shall be reasoned and shall contain a detailed assessment of the situation, including of the market conditions and outlook, that justifies the extension.

Article 129 - (1) Where the operations of a bridge bank are terminated in the circumstances referred to at the letters c) or d) of Article 124, the bridge bank shall be wound up under normal bank insolvency proceedings.

(2) Subject to the provisions of Article 91, any proceeds generated as a result of the termination of the operation of the bridge bank shall benefit the shareholders of the bridge bank.

Article 130 - Where a bridge bank is used for the purpose of transferring assets, rights and liabilities of more than one bank under resolution the obligation referred to in Article 129 shall refer to the assets, rights and liabilities transferred from each of the banks under resolution and not to the bridge bank itself.

Article 131 - The National Bank of Moldova, in its capacity of competent authority, may license a bridge bank with a share capital below the threshold referred to in Article 9 of Law no. 202/2017 On Banks Activity, while it cannot be lower than the equivalent of MDL 50 million.

Article 132 - Compliance of the Ministry of Finance with the criteria in Article 48 of Law no. 202/2017 On Banks Activity is presumed.

Article 133 - By derogation from articles 17, 18 and 19 of Law no. 202/2017 On Banks Activity, the National Bank of Moldova, in its capacity of competent authority, shall decide on the licensing of the bridge bank in the shortest period possible from the moment of receiving the package referred to in Article 134 from the authority exercising the resolution function, considering its decision, in its capacity of resolution authority, on approving the elements regarding the operation of the bridge bank as referred to at the letters a) to d) of paragraph (1) of Article 122.

Article 134 - The National Bank of Moldova shall specify by regulations the conditions and documentation required for licensing the bridge bank.

Article 135 - (1) The state registration of the bridge bank is completed as a matter of urgency, based only on the constitutive act and the request from the National Bank of Moldova within 24 hours from the moment when the acts are submitted to the state registration body.

(2) All other acts required by law for state registration shall be submitted within 30 days from the day of state registration.

Article 136 - The bridge bank licensed as provided by the Law no. 202/2017 On Banks Activity shall start operation on the first working day following the day of license issuance.

Article 137 - (1) If the bridge bank licensed as provided by the Law no. 202/2017 On Banks Activity is sold via the sale of its shares, from the moment of their sale the bank that has operated as a bridge bank must meet all legal requirements to be met by a bank.

(2) In the situation specified in paragraph (1) the validity of the license of the bank that has operated as a bridge bank is not terminated with the power of law; the license remains valid for an indeterminate period.

SECTION 4 **Asset separation tool**

Article 138 - (1) In order to give effect to the asset separation tool, the National Bank of Moldova, in its capacity of resolution authority, shall have the power to transfer assets, rights or liabilities of a bank under resolution or a bridge bank to one or more asset management vehicles.

(2) Complying with articles 292 to 294, the transfer specified at paragraph (1) may take place without the endorsement of the shareholders of the bank under resolution or any third party, other than the bridge bank, and shall not be subject to any procedural requirement specified by the relevant legislation regulating businesses or capital markets, while the provisions of Article 232 shall apply.

Article 139 - In the spirit of the asset separation tool, an asset management vehicle shall be a legal person that meets all of the following requirements:

a) the share capital is entirely or partially held by one or several public authorities and the asset management vehicle is controlled by the National Bank of Moldova, in its capacity of resolution authority, in the spirit of Article 231, paragraph (1), letter b) and, in particular, taking account of Article 141. The Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, may be a shareholder of the asset management vehicle;

b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more banks under resolution or a bridge bank.

Article 140 - The asset management vehicle shall manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down.

Article 141 - The operation of an asset management vehicle shall respect the following provisions:

a) the contents of the asset management vehicle's constitutional documents are approved by the National Bank of Moldova, in its capacity of resolution authority;

b) depending on the structure of the shareholders of the asset management vehicle, the National Bank of Moldova, in its capacity of resolution authority, shall appoint or approve the managing body of the asset management vehicle;

c) The National Bank of Moldova, in its capacity of resolution authority, shall approve the remunerations of the managing body and specifies their responsibilities;

d) The National Bank of Moldova, in its capacity of resolution authority, shall approve the strategy and risk profile of the asset management vehicle.

Article 142 - The National Bank of Moldova, in its capacity of resolution authority, may use the powers given by Article 138 to transfer shares, rights or other instruments of ownership only in one of the following circumstances:

a) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal bank wind-up proceedings could have an adverse effect on one or more financial markets;

b) such a transfer is necessary to ensure the proper functioning of the bank under resolution or bridge bank; or

c) such a transfer is necessary to maximise liquidation proceeds.

Article 143 - When applying the asset separation tool, National Bank of Moldova, in its capacity of resolution authority, shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established in articles 72 to 84. This Article does not prevent the consideration having nominal or negative value.

Article 144 - Complying with Article 1, any consideration related to assets, rights or liabilities received directly from the bank under resolution shall be paid by the asset management vehicle to the benefit of the bank under resolution. Consideration may be paid in the form of debt issued by the asset management vehicle.

Article 145 - Where the bridge bank tool has been applied, an asset management vehicle may, subsequent to the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.

Article 146 - (1) The National Bank of Moldova, in its capacity of resolution authority, may transfer assets, rights or liabilities from the bank under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the bank under resolution only provided that the conditions specified in Article 147 are met.

(2) The bank under resolution shall be obliged to take back any such assets, rights or liabilities.

Article 147 - (1) The National Bank of Moldova, in its capacity of resolution authority, may transfer rights, assets or liabilities back from the asset management vehicle to the bank under resolution in one of the following circumstances:

a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the decision to use the asset separation tool, by which the transfer was made;

b) when the specific rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of rights, assets or liabilities specified in the decision referred to at the letter a).

(2) In either of the cases referred at paragraph (1), the transfer back may be made within any period, and shall comply with any other conditions, stated in that decision on using the asset separation tool for the purpose of performing that transfer.

Article 148 - Transfers between the bank under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified at articles 262 to 276.

Article 149 - Without prejudice to articles 262-276, the shareholders or creditors of the bank under resolution and other third parties whose assets, rights or liabilities are not transferred to the asset

management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle, to the managing body or in relation to it.

Article 150 - The objectives of the asset management vehicle do not imply any obligation or responsibility of the asset management vehicle with regard to the shareholders or creditors of the bank under resolution, and the managing body is not required to report to the shareholders or creditors regarding the actions taken and omissions made while performing their duties, except for the cases when the actions or omissions imply grave ill-will or negligence in accordance with the law, which affects directly the rights of such shareholders and creditors.

SECTION 5

The bail-in tool

Article 151 - The National Bank of Moldova, in its capacity of resolution authority, may use the resolution powers given by Article 231 to make use of the bail-in tool.

Article 152 - The National Bank of Moldova, in its capacity of resolution authority, may apply the bail-in tool to meet the resolution objectives specified in Article 56, in accordance with the resolution principles specified in Article 61 for any of the following purposes:

a) to recapitalise a bank that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for licensing and to continue to carry out the activities for which it is licensed under the Law no. 202/2017 On Banks Activity and to sustain sufficient market confidence in the bank;

b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge bank, to contribute capital to the bridge bank or within the sale of business tool, or the asset separation tool.

Article 153 - (1) The National Bank of Moldova, in its capacity of resolution authority, may apply the bail-in tool for the purpose referred to at the letter a) of Article 152 only if there is a reasonable prospect that the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by Article 193 will, in addition to achieving relevant resolution objectives, restore the bank's financial soundness and long-term viability.

(2) The National Bank of Moldova, in its capacity of resolution authority, may use any of the resolution tools referred to at the letters a) to c) of Article 87 and the bail-in tool given by letter b) of Article 152 when the conditions provided at paragraph (1) of Article 153 are not met.

Article 154 - The bail-in tool may be applied by the National Bank of Moldova, in its capacity of resolution authority, to all liabilities of a bank that are not excluded from the scope of that tool pursuant to Article 155 or Article 156.

Article 155 - (1) The National Bank of Moldova, in its capacity of resolution authority, may not use the write-down or conversion powers for the following liabilities, irrespective of the law that regulates them:

a) covered deposits;

b) covered liabilities, including covered bonds and liabilities that are financial instruments used for hedging purposes which form an integral part of the cover pool and which according to law are secured in a way similar to the covered bonds;

c) any liability that arises by virtue of the bank's holding assets or liquidity owned by the customers, including assets or liquidity owned by the customers held on behalf of a collective securities investment body provided that such a customer is protected under the applicable forced bank wind-up procedures;

d) any liability that arises by virtue of a fiduciary relationship between the bank (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable forced bank wind-up law or civil law;

e) liabilities to banks, excluding entities that are part of the same group, with an original maturity of less than seven days;

f) liabilities with a remaining maturity of less than seven days, owed to payment settlement systems for operations with financial instruments or operators thereof or their participants and arising from the participation in such a system;

g) a liability to any of the entities given at paragraph (2).

(2) In the spirit of letter g) of paragraph (1) the categories of entities are as follows:

a) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;

b) a commercial creditor, in the spirit of gaining profit or not, arising from the provision to the bank of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;

c) the State Tax Service and social security authorities, provided that those liabilities are preferred under the applicable law;

d) deposit guarantee schemes for liabilities arising from contributions due in accordance with the law on deposit guarantee schemes.

(3) Letter a) of paragraph (2) shall not apply to the variable component of the remuneration of material risk takers as identified in the regulations of the National Bank of Moldova.

(4) All secured assets relating to a covered bond cover pool shall remain unaffected, segregated and with enough funding.

(5) Neither the requirement in paragraph (4) nor letter b) of paragraph (1) shall prevent the National Bank of Moldova, in its capacity of resolution authority, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

(6) Letter a) of paragraph (1) shall not prevent the National Bank of Moldova, in its capacity of resolution authority, where appropriate, from exercising those powers in relation to any amount of a deposit that exceeds the coverage level provided for in the legislation on deposit guarantee schemes.

(7) Without prejudice to the exposure rules in the Law no. 202/2017 On Banks Activity and relevant regulations of the National Bank of Moldova, to ensure that in order to provide for the resolvability of banks, the National Bank of Moldova, in its capacity of resolution authority, shall limit, in accordance with letter b) of Article 39 of this Law, the extent to which other banks hold liabilities eligible for a bail-in tool, save for liabilities that are held at entities that are part of the same group.

Article 156 - Where the National Bank of Moldova, in its capacity of resolution authority, decides to exclude or partially exclude an eligible liability or class of eligible liabilities under paragraph (2) of article 61, the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other eligible liabilities complies with the principle in point g) of Article 61.

Article 157 - Where the National Bank of Moldova, in its capacity of resolution authority, decides to exclude or partially exclude an eligible liability or class of eligible liabilities pursuant to articles 154-163, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the resolution financing arrangement may make a contribution to the bank under resolution to do one or both of the following:

a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the bank under resolution to zero in accordance with letter a) of Article 171;

b) purchase shares or other instruments of ownership or capital instruments in the bank under resolution, in order to recapitalise the bank in accordance with letter b) of Article 171.

Article 158 - The resolution financing arrangement may contribute as provided by Article 157 only if:

a) a contribution to loss absorption and recapitalisation of the bank equal to an amount not less than 8% of total liabilities including own funds of the bank, measured at the time of resolution action in accordance with the valuation provided for in articles 72 to 84, has been made by the shareholders and the holders of other instruments of ownership, as well as the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise; and

b) the contribution of the resolution financing arrangement does not exceed 5% of total liabilities including own funds of the bank, measured at the time of resolution action in accordance with the valuation provided for in articles 72 to 84.

Article 159 - The contribution of the resolution financing arrangement referred to in Article 157 may be financed by:

a) the amount available to the resolution financing arrangement which has been raised through contributions by banks in accordance with Article 298 and articles 306 to 309;

b) the amount that can be raised through ex-post contributions in accordance with articles 310 to 312 within three years; and

c) where the amounts referred to letters a) and b) are insufficient, amounts raised from alternative financing sources in accordance with Article 313.

Article 160 - (1) In extraordinary circumstances, the National Bank of Moldova, in its capacity of resolution authority, may seek to get additional financing from alternative financing sources after:

a) the 5 % limit specified at the letter b) of Article 158 has been reached; and

b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

(2) As an alternative or in addition, where the conditions laid down in paragraph (1) are met, the resolution financing arrangement may make a contribution from resources which have been raised through ex-ante contributions in accordance with Article 298 and articles 306 to 309 and which have not yet been used.

Article 161 - By way of exception from letter a) of Article 158, the resolution financing arrangement may also make a contribution as referred to in Article 157 provided that:

a) the contribution to loss absorption and recapitalisation referred to at the letter a) of Article 158 is equal to an amount not less than 20 % of the risk weighted assets of the bank concerned;

b) the resolution financing arrangement has at its disposal, by way of yearly ex-ante contributions (not including contributions to a deposit guarantee scheme) raised in accordance with Article 298 and Article 306 to 309, an amount which is at least equal to 3% of guaranteed deposits of all the licensed banks of Moldova; and

c) the bank has assets in the amount determined as provided by the regulations of the National Bank of Moldova issued while applying this resolution.

Article 162 - When exercising exclusion powers provided by Article 156, the National Bank of Moldova, in its capacity of resolution authority, shall pay due attention to:

a) the principle that losses should be borne first by shareholders and next, in general, by creditors of the bank under resolution in order of preference, in accordance with the Law no. 550/1995 On Banks Liquidation;

b) the level of loss absorbing capacity that would remain in the bank under resolution if the debt or class of debt were excluded; and

c) the need to maintain adequate resources for resolution financing.

Article 163 - Exclusions under Article 156 may be applied either to completely exclude a liability from write down or to limit the extent of the write down applied to that liability.

Article 164 - (1) Bank shall meet the minimum requirement for own funds and eligible liabilities at all times.

(2) The minimum requirement shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds of the institution.

(3) For the purpose of paragraph (2) derivative liabilities shall be included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

Article 165 - (1) Eligible liabilities shall be included in the amount of own funds and eligible liabilities referred to in Article 164 only if they satisfy the following conditions:

- a) the instrument is issued and fully paid up;
- b) the liability is not owed to, secured by or guaranteed by the bank itself;
- c) the purchase of the instrument was not funded directly or indirectly by the bank;
- d) the liability has a remaining maturity of at least one year;
- e) the liability does not arise from a derivative;
- f) the liability does not arise from a deposit which benefits from preference in accordance with the legislation regulating forced wind-up of banks.

(2) For the purpose of letter d) of paragraph (1) where a liability confers upon its owner a right to early reimbursement, the maturity of that liability shall be the first date where such a right arises.

Article 166 - Where a liability is governed by the law of another country, the National Bank of Moldova, in its capacity of resolution authority, may require the bank to demonstrate that any of its decision or any decision of another resolution authority to write down or convert that liability would be effective under the law of that country, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. If the National Bank of Moldova, in its capacity of resolution authority, is not satisfied that any decision would be effective under the law of that country, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

Article 167 - (1) The National Bank of Moldova shall ensure that the minimum requirement for own funds and eligible liabilities of each bank as provided by Article 164 is determined by the resolution authority after consultation with the supervisory authority, based on at least the following criteria:

- a) the need to ensure that the bank can be resolved in the spirit of paragraph (3) of Article 32 by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
- b) the need to ensure, in appropriate cases, that the bank has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity basic Tier 1 ratio of the bank could be restored to a level necessary to enable it to continue to comply with the conditions for licensing and to continue to carry out the activities for which it is licensed under the Law no. 202/2017 On Banks Activity and to sustain sufficient market confidence in the bank;
- c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 156 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the bank has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity basic Tier 1 ratio of the bank could be restored to a level necessary to enable it to continue to comply with the conditions for licensing and to continue to carry out the activities for which it is licensed under the Law no. 202/2017 On Banks Activity;
- d) the size, the business model, the funding model and the risk profile of the bank;

e) the extent to which the failure of the bank would have adverse effects on financial stability, including, due to its interconnectedness with other banks or with the rest of the financial system through contagion to other banks.

(2) With a view to implement the provisions of para (1), the National Bank of Moldova shall issue regulations.

Article 168 - The decisions taken in accordance with articles 164 to 170 may provide that the minimum requirement for own funds and eligible liabilities is partially met through contractual bail-in instruments.

Article 169 - To qualify as a contractual bail-in instrument under Article 168, the National Bank of Moldova, in its capacity of resolution authority, shall be satisfied that the instrument:

a) contains a contractual term providing that, where the National Bank of Moldova, in its capacity of resolution authority, decides to apply the bail-in tool to that institution, the instrument shall be written down or converted to the extent required before other eligible liabilities are written down or converted; and

b) is subject to a binding subordination agreement, undertaking or provision under which in the event of forced bank wind-up proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.

Article 170 - The National Bank of Moldova shall ensure that the resolution authority, in coordination with the supervisory authority, shall require and verify that banks meet the minimum requirement for own funds and eligible liabilities laid down in Article 164 and where relevant the requirement laid down in Article 167, and shall take any decision pursuant to articles 164 to 169 simultaneously with the development and the maintenance of resolution plans.

Article 171 - Where the bail-in tool is applied, the National Bank of Moldova, in its capacity of resolution authority, shall determine, based on a valuation that complies with articles 72 to 84 the aggregated sum of the following:

a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the bank under resolution is equal to zero; and

b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity basic Tier 1 capital ratio of the bank under resolution or of the bridge bank.

Article 172 - (1) The assessment referred to in Article 171 shall establish the amount by which eligible liabilities need to be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the bank under resolution or where applicable establish the Common Equity basic Tier 1 capital ratio of the bridge bank taking into account any contribution of capital by the resolution financing arrangement pursuant to letter d) of paragraph (1) of Article 301, and to sustain sufficient market confidence in the bank under resolution or the bridge bank and enable it to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is licensed under the Law no. 202/2017 On Banks Activity.

(2) Where the National Bank of Moldova, in its capacity of resolution authority, intends to use the asset separation tool referred to in articles 138 to 150, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

Article 173 - Where capital has been written down in accordance with articles 219 to 230 and bail-in has been applied pursuant to Article 152 and the level of write-down based on the preliminary valuation according to articles 72 to 84 is found to exceed requirements when assessed against the definitive valuation according to Article 81, a write-up mechanism may be applied by the National Bank of Moldova, in its capacity of resolution authority, to reimburse creditors and then shareholders to the extent necessary.

Article 174 - The National Bank of Moldova, in its capacity of resolution authority, shall establish and maintain arrangements to ensure that the assessment and valuation is based on information about the assets, liabilities and own funds of the bank under resolution that is as up to date and comprehensive as is reasonably possible.

Article 175 - (1) When applying the bail-in tool in Article 152 or the write down or conversion of capital instruments in articles 219 to 225, the National Bank of Moldova, in its capacity of resolution authority, take in respect of shareholders and holders of other instruments of ownership one or both of the following actions:

a) cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors;
b) provided that, in accordance to the valuation carried out under articles 72-84, the bank under resolution has a positive net value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of relevant capital instruments issued by the bank pursuant to the power referred to in Article 220 or eligible liabilities issued by the bank under resolution pursuant to the power referred to at the letter f) of paragraph (1) of Article 231.

(2) The conversion conducted under letter b) of paragraph (1) shall be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership.

Article 176 - The actions referred to in Article 175 shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances:

a) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the National Bank of Moldova, in its capacity of resolution authority, that the bank met the conditions for resolution; or

b) pursuant to the conversion of relevant capital instruments to Common Equity basic Tier 1 instruments pursuant to articles 226-230.

Article 177 - When determining the action to be taken further under Article 175, the National Bank of Moldova, in its capacity of resolution authority, means:

a) the valuation carried out in accordance with articles 72 to 84;
b) the amount by which it has assessed that Common Equity basic Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Article 226; and
c) the aggregate amount determined by it under articles 171 to 174.

Article 178 - By way of derogation from provisions on requesting prior endorsement, notification of divestiture and reduction of the stock in the share capital of a bank and valuation of stocks purchased in the share capital of a bank under articles 45, 47, 48 and 50 of Law no. 202/2017 On Banks Activity and from the requirement to give a notice in paragraph (1) of Article 51 of the same Law, where the application of the bail-in tool or the conversion of capital instruments would result in the acquisition of or increase in a qualifying holding in a bank as referred to in paragraph (1) of Article 45 of the same Law, the National Bank of Moldova, in its capacity of competent authority, shall carry out the assessment required under those articles in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives.

Article 179 - If the National Bank of Moldova, in its capacity of competent authority of that bank, has not completed the assessment required under Article 178 on the date of application of the bail-in tool or the conversion of capital instruments, Article 102 shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.

Article 180 - When applying the bail-in tool, the National Bank of Moldova, in its capacity of resolution authority, uses the write-down or conversion powers, while complying with any exclusions under articles 155 and 156, as well as with the following requirements:

a) the amount of Common Equity basic Tier 1 items is reduced pursuant to letter a) of Article 226; and

b) only if the total reduction pursuant to letter a) is less than the sum of the amounts referred to at the letters b) and c) of Article 177, the National Bank of Moldova reduces the principal amount of additional Tier 1 instruments to the extent required and to the extent of their capacity;

c) only if the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to letters a) and b) is less than the sum of the amounts referred to at the letters b) and c) of Article 177, the National Bank of Moldova reduces to the extent required the principal amount of subordinated debt that is not additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in forced wind-up proceedings, in conjunction with the write down pursuant to letters a) and b) to produce the sum of the amounts referred to at the letters b) and c) of Article 177;

c) only if the total reduction of shares or other instruments of ownership and relevant capital instruments, as well as eligible liabilities pursuant to letters a)-c) is less than the sum of the amounts referred to at the letters b) and c) of Article 177, the National Bank of Moldova reduces to the extent required the principal amount or the outstanding amount payable related to remaining eligible liabilities in accordance with the hierarchy of claims in forced wind-up proceedings, while complying with articles 154 to 163, in conjunction with the write down pursuant to letters a)-c) to produce the sum of the amounts referred to at the letters b) and c) of Article 177;

Article 181 - (1) When applying the write down or conversion powers, the National Bank of Moldova, in its capacity of resolution authority, shall allocate the losses represented by the sum of the amounts referred to in points b) and c) of Article 177 equally between shares or other instruments of ownership and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and eligible liabilities to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 156.

(2) Paragraph (1) shall not prevent liabilities which have been excluded from bail-in in accordance with articles 155 and 156 from receiving more favourable treatment than eligible liabilities which are of the same rank in forced bank wind-up proceedings.

Article 182 - Before applying the write down or conversion referred to at the letter d) of Article 180, the National Bank of Moldova, in its capacity of resolution authority, shall convert or reduce the principal amount on instruments referred to in points b) to c) of Article 180 when those instruments contain the following terms and have not already been converted:

a) terms that provide for the principal amount of the instrument to be written down on the occurrence of any event that refers to the financial situation, solvency or the own funds of the bank;

b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.

Article 183 - Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to at the letter a) of Article 182 before the application of the bail-in pursuant to Article 180, the National Bank of Moldova, in its capacity of resolution authority, shall apply the write-down and conversion powers to the residual amount of that principal in accordance with Article 180.

Article 184 - When deciding on whether liabilities are to be written down or converted into equity, the National Bank of Moldova, in its capacity of resolution authority, shall not convert one class of liabilities, while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under articles 155 and 156.

Article 185 - The National Bank of Moldova, in its capacity of resolution authority, shall apply its write-down and conversion powers for the liabilities coming from derivative financial instruments, while complying with articles 186 to 189.

Article 185 - The National Bank of Moldova, in its capacity of resolution authority, shall apply its write-down and conversion powers for the liabilities coming from derivative financial instruments only at the time of wind-up or after the wind-up of the derivatives.

(2) When starting resolution, the National Bank of Moldova, in its capacity of resolution authority, is empowered to terminate and close for this purpose any the derivative contract.

Article 187 - Where a derivative liability has been excluded from the application of the bail-in tool under Article 156, the National Bank of Moldova, in its capacity of resolution authority, shall not be obliged to terminate or close out the derivative contract.

Article 188 - Where derivative transactions are subject to a netting agreement, the National Bank of Moldova, in its capacity of resolution authority, or an independent valuator shall determine as part of the valuation under articles 72 to 84 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

Article 189 - The National Bank of Moldova, in its capacity of resolution authority, shall set the quantum for the liabilities coming from derivative financial instruments on the basis of:

a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and

c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

Article 190 - (1) when the National Bank of Moldova, in its capacity of resolution authority, exercises the powers specified in Article 221 and at the letter f) of paragraph (1) of Article 231, it may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the principles referred to in paragraphs (2) and (3).

(2) The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down and conversion powers.

(3) When different conversion rates are applied according to paragraph (1), the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law shall be higher than the conversion rate applicable to subordinated liabilities.

Article 191 - The National Bank of Moldova, in its capacity of resolution authority, shall use the bail-in tool to re-capitalize a bank as provided at the letter a) of Article 152, while making arrangements to ensure, draw up and implement a bank's business reorganization plan as provided by articles 193 to 201.

Article 192 - The arrangements referred to in Article 191 may include the appointment by the National Bank of Moldova, in its capacity of resolution authority, of a person or persons appointed in accordance with Article 259 with the objective of drawing up and implementing the business reorganisation plan required by articles 193-201.

Article 193 - Within one month after the application of the bail-in tool to a bank in accordance with letter a) of Article 152, the managing body or the person or persons appointed in accordance with Article 259 shall draw up and submit to the National Bank of Moldova, in its capacity of resolution authority, a business reorganisation plan that satisfies the requirements of Article 195.

Article 194 - In circumstances considered exceptional by the National Bank of Moldova, in its capacity of resolution authority, and if it is necessary for achieving the resolution objectives, it may extend the period in paragraph (1) up to a maximum of two months since the application of the bail-in tool.

Article 195 - (1) A business reorganisation plan shall set out measures aiming to restore the long-term viability of the bank or parts of its business within a reasonable timescale. Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which the bank will operate.

(2) The business reorganisation plan shall take account at least the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities. Assumptions shall be compared with appropriate sector-wide benchmarks.

(3) A business reorganisation plan shall include at least the following elements:

- a) a detailed description of the factors and problems that have resulted in a situation when the bank is deemed to be failing or likely to fail and of the circumstances that have led to the difficulties it is facing;
- b) a description of the measures aiming to restore the long-term viability of the bank;
- c) a timetable for the implementation of those measures.

Article 196 - The measures aiming to restore the long-term viability of the bank may include:

- a) reorganization of business activities;
- b) changes to the operational systems and infrastructure within the bank;
- c) the withdrawal from loss-making activities;
- d) the restructuring of existing activities that can be made competitive;
- e) the sale of assets or of business lines.

Article 197 - (1) Within one month of the date of submission of the business reorganisation plan, the National Bank of Moldova, in its capacity of resolution authority, shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the bank.

(2) The National Bank of Moldova should make sure that the structure exercising resolution function carries out the valuation specified at paragraph (1) jointly with the supervisory authority.

(3) The National Bank of Moldova, in its capacity of resolution authority, shall approve the business reorganization plan when the resolution and supervisory entities conclude that the plan would achieve the objective specified in paragraph (1).

Article 198 - (1) If the National Bank of Moldova, in its capacity of resolution authority, is not satisfied that the plan would achieve the objective referred to in Article 197, it shall notify the managing body or the person or persons appointed in accordance with Article 259 of its concerns and require the amendment of the plan in a way that addresses those concerns.

(2) The National Bank of Moldova shall ensure that notification of the activity referred to in paragraph (1) is conducted by the resolution authority jointly with the supervisory authority.

Article 199 - (1) Within two weeks from the date of receipt of the notification referred to in Article 198, the managing body or the person or persons appointed in accordance with Article 259 shall submit an amended plan to the National Bank of Moldova, in its capacity of resolution authority, for approval.

(2) The National Bank of Moldova, in its capacity of resolution authority, shall assess, complying with paragraph (2) of Article 197, the amended plan, and shall notify the managing body or the person or persons appointed in accordance with Article 259 within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

Article 200 - The managing body or the person or persons appointed in accordance with Article 259 shall implement the reorganisation plan as agreed in line with Article 197 and shall submit a report to the National Bank of Moldova, in its capacity of resolution authority, at least every six months on progress in the implementation of the plan.

Article 201 - (1) The managing body or the person or persons appointed in accordance with Article 259 shall revise the plan if, in the opinion of the National Bank of Moldova, in its capacity of resolution authority, it is necessary to achieve the aim referred to in paragraphs (1) and (2) of Article

195 and shall submit any such revision to the National Bank of Moldova, in its capacity of resolution authority, for approval.

(2) When expressing its opinion under paragraph (1), the National Bank of Moldova should make sure that the structure exercising resolution function has the prior agreement of the supervisory authority.

Article 202 - Where the National Bank of Moldova, in its capacity of resolution authority, exercises a power referred to at the letters e) to i) of paragraph (1) of Article 231 and of Article 220, the reduction of principal or outstanding amount due, conversion or cancellation takes effect and is immediately binding on the bank under resolution and affected creditors and shareholders.

Article 203 - The National Bank of Moldova, in its capacity of resolution authority, shall have the power to complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to at the letters e) to i) of paragraph (1) of Article 231 and in Article 220, including:

- a) the amendment of all relevant registers;
- b) the delisting or removal from trading of shares or other instruments of ownership or debt instruments;
- c) the listing or admission to trading of new shares or other instruments of ownership;
- d) the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus pursuant to the Capital Market Law 171 dated July 11, 2012.

Article 204 - Where the National Bank of Moldova, in its capacity of resolution authority, reduces to zero the principal amount of, or outstanding amount payable in respect of a liability by means of the power referred to at the letter e) of paragraph (1) of Article 23, that liability and any obligations or claims arising in relation to it that are not accrued, as applicable, at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the bank under resolution or any successor entity in any subsequent winding up.

Article 205 - Where the National Bank of Moldova, in its capacity of resolution authority, reduces partially the principal amount of, or outstanding amount payable in respect of a liability by means of the power referred to at the letter e) of paragraph (1) of Article 231:

- a) the liability is written down by the amount reduced;
- b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the National Bank of Moldova, in its capacity of resolution authority, might make by means of the power referred to at the letter j) of paragraph (1) of Article 231.

Article 206 - Without prejudice to letter i) of paragraph (1) of Article 231, the banks shall maintain at all times a sufficient amount of authorised share capital or of other Common Equity basic Tier 1 instruments, so that, in the event that the National Bank of Moldova, in its capacity of resolution authority, exercises the powers referred to at the letters e) and f) of paragraph (1) of Article 231 in relation to a bank, the bank is not prevented from issuing sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership could be carried out effectively.

Article 207 - In the context of drawing up and updating a bank's resolution plan, the National Bank of Moldova, in its capacity of resolution authority, shall assess the need to require the bank to meet the requirement in Article 206, particularly taking account of the resolution measures included in the plan. If the resolution plan provides for the possible application of the bail-in tool, the National

Bank of Moldova, in its capacity of resolution authority, shall verify that the authorised share capital or other Common Equity basic Tier 1 instruments is sufficient to cover the sum of the amounts referred to at the letters b) and c) of Article 177.

Article 208 The bank's instruments of incorporation or statutes, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital shall bring no procedural impediments to the conversion of liabilities to shares or other instruments of ownership.

Article 209- Article 206 to 208 shall not bring prejudice to paragraph (2) of Article 93.

Article 210 - The banks shall include a contractual term by which the creditor or party to the agreement creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by the National Bank of Moldova, in its capacity of resolution authority, provided that such liability is:

- a) not excluded under Article 155;
- (b) not a covered deposit;
- (c) governed by the law of a third country; and
- (d) issued or entered into after the date on which the bail-in provisions apply.

Article 211 - (1) Article 210 shall not apply where the National Bank of Moldova, in its capacity of resolution authority, determines that the liabilities or instruments referred to in the Article can be subject to write down and conversion powers by the National Bank of Moldova, in its capacity of resolution authority, pursuant to the law of another country or to a binding agreement concluded with that country.

(2) The National Bank of Moldova, in its capacity of resolution authority, may require the banks to provide a legal opinion relating to the legal enforceability and effectiveness of the clause in Article 210.

Article 212 - If a bank fails to include in the contractual provisions governing a relevant liability a term required in accordance paragraph Article 210, that failure shall not prevent the National Bank of Moldova, in its capacity of resolution authority, from exercising the write down and conversion powers in relation to that liability.

CHAPTER V

Government financial stabilisation tools

Article 213 - (1) To take part in a bank's resolution, including by direct intervention to prevent its wind-up, with a view to achieve the resolution objectives under Article 56, outstanding Government financial support may be provided by means of additional financial stabilization tools, as provided by Article 92, Article 214. After consulting with the National Bank of Moldova, in its capacity of resolution authority, the Government has the right to decide on the application by the Ministry of Finance of the financial stabilisation tools.

(2) In the spirit of paragraph (1) the Government shall decide on the resolution powers under articles 231 – 261, which the Ministry of Finance has at its disposal. articles 241 to 245, articles 283 to 287 apply to ensure the effectiveness of the Government financial stabilisation tools.

Article 214 - The government financial stabilisation tools shall be used as a last resort after having assessed and approached the possibility of exploring other resolution tools to the maximum extent possible, also considering the need to maintain the financial stability.

Article 215 - The Government shall approve the decision on deploying the government financial stabilisation tools only when all conditions in paragraph (1) of Article 58, as well as one of the conditions below are met:

a) The Ministry of Finance and the National Bank of Moldova, in its capacity of resolution authority, determine that the application of resolution tools has not been sufficient to prevent significant negative effects on the financial system. The National Bank of Moldova shall make sure that the assessment also takes account of its powers as central bank and competent authority;

b) The Ministry of Finance and the National Bank of Moldova, in its capacity of resolution authority, determine that the application of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the National Bank of Moldova, in its capacity of central bank, has previously been given to the institution;

c) in respect of the temporary public ownership tool, the Ministry of Finance, as competent ministry, determines that the application of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the institution. The decision shall be taken after consultation with the National Bank of Moldova, in its capacity of competent and resolution authority.

Article 216 - The financial stabilisation tools shall consist of the following:

a) public equity support tool as referred to in Article 217;

b) temporary public ownership tool as referred to in Article 219.

Article 217 - (1) Complying with the commercial society legal framework, the Government has the right to decide that the Ministry of Finance takes part in a bank's recapitalization by providing equity support in exchange for the following instruments, complying with the requirements of the Law no. 202/2017 On Banks Activity, with subsequent amendments:

a) Common Equity basic Tier 1 instruments;

b) Common Equity additional Tier 2 or Tier 2 instruments;

(2) The Ministry of Finance shall ensure, to the extent the equity held in a bank allows it, that the bank that is the object of the equity support tool as provided in the current legislation is managed on a commercial and professional basis.

(3) Where the public equity support tool is implemented in accordance with this Article, the Ministry of Finance it shall ensure that its holding in the bank is transferred to the private sector, based on a Government decision, as soon as commercial and financial circumstances allow.

Article 218 - (1) A bank may be given into temporary public ownership.

(2) In the spirit of paragraph (1), on the basis of a Government decision, the Ministry of Finance makes one or more share transfer orders in which the transferee is a nominee of the Government.

(3) The Ministry of Finance shall ensure that the banks subject to the temporary public ownership tool in accordance with this Article are managed on a commercial and professional basis and that they are transferred back to the private sector, on the basis of a Government decision, as soon as commercial and financial circumstances allow that.

CHAPTER VI

Write down of capital instruments

Article 219 - The power to write down or convert relevant capital instruments may be exercised either:

a) independently of resolution action; or

b) in combination with a resolution action, where the conditions for resolution specified in articles 58-60 are met.

Article 220 – The National Bank of Moldova, in its capacity of resolution authority, has the power to write down or convert relevant capital instruments into shares or other instruments of ownership of banks.

Article 221 - The National Bank of Moldova, in its capacity of resolution authority, shall apply its write-down and conversion powers coming from articles 226- to 230 without delay, when it comes to relevant capital instruments issued by a bank, when at least one of the following conditions is met:

a) where the determination has been made that all conditions for resolution specified in articles 58 and 60 have been met, before any resolution action is taken;

b) The National Bank of Moldova acting as the competent authority determines that if the power is not applied with regard to relevant capital tools, the bank would no longer be viable;

f) extraordinary public financial support is required by the bank except in any of the circumstances set out at the letter c) of paragraph (2) of Article 59.

Article 222 - In the spirit of Article 221 the bank shall be considered no longer viable only if all the following conditions are met:

a) the bank is deemed to be failing or likely to fail;

b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, independently or in combination with a resolution action, would prevent the failure of the bank within a reasonable timeframe.

Article 223 - In the spirit of letter a) of Article 222, an bank shall be deemed to be failing or likely to fail in one or more of the circumstances specified in Article 59.

Article 224 - The National Bank of Moldova shall ensure that once the assessment referred to in Article 221 takes place the supervisory authority informs immediately the resolution authority.

Article 225 - (1) Before exercising the power to write down or convert capital instruments the National Bank of Moldova, in its capacity of resolution authority, shall ensure that a valuation of the assets, liabilities and own capitals of the bank is carried out under articles 72-84.

(2) In the spirit of paragraph (1), that valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalize bank.

Article 226 - When acting under articles 219 to 225, the National Bank of Moldova, in its capacity of resolution authority, shall exercise the write down or conversion power in accordance with the priority of claims under forced bank wind-up proceedings, in a way that produces the following results:

a) Common Equity basic Tier 1 items are reduced first in proportion to the losses and to the extent of their absorption capacity and the National Bank of Moldova, in its capacity of resolution authority, takes one or both of the actions specified in Article 175 in respect of holders of Common Equity basic Tier 1 instruments;

b) the principal amount of additional Tier 1 instruments is written down or converted into Common Equity basic Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in articles 55-57 or to the extent of the capacity of the relevant capital instruments, whichever is lower.

Article 227 - Where the principal amount of a relevant capital instrument is written down:

a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 173;

b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already

accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power;

c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with Article 228.

Article 228 - In order to effect a conversion of relevant capital instruments under letter b) of Article 226, the National Bank of Moldova, in its capacity of resolution authority, may require the banks to issue Common Equity basic Tier 1 instruments to the holders of the relevant capital instruments. Relevant capital instruments may only be converted where the following conditions are met:

a) the Common Equity basic Tier 1 instruments are issued by the bank with the consent of the National Bank of Moldova, in its capacity of the bank's resolution authority;

b) those Common Equity basic Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by a bank in the spirit of provision of equity by the State or a government entity;

c) those Common Equity basic Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;

d) the conversion rate that determines the number of Common Equity basic Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 190.

Article 229 - In the spirit of the provision of Common Equity basic Tier 1 instruments in accordance with Article 228, the National Bank of Moldova, in its capacity of resolution authority, may require the banks to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity basic Tier 1 instruments.

Article 230 - Where an institution meets the conditions for resolution and the National Bank of Moldova, in its capacity of resolution authority, decides to apply a resolution tool to that bank, the National Bank of Moldova, in its capacity of resolution authority, shall comply with the requirement laid down in Article 221 before applying the resolution tool.

CHAPTER VII

Resolution powers

SECTION 1

General powers

Article 231 - (1) The National Bank of Moldova, in its capacity of resolution authority, shall apply resolution tools to the banks that meet the conditions for resolution. For this purpose, the National Bank of Moldova has the following resolution powers that may be applied individually or in any combination:

a) to require any person to provide any information required to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;

b) to take control of a bank under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the managing body of the bank under resolution;

c) to transfer shares or other instruments of ownership issued by a bank under resolution;

b) to transfer to another entity, with its consent, the assets, rights and liabilities of the bank under resolution;

- e) reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of eligible liabilities, of a bank under resolution;
- f) to convert eligible liabilities of a bank under resolution into ordinary shares or other instruments of ownership of the bank or of the bridge bank to which assets, rights or liabilities of the bank are transferred;
- g) to cancel debt instruments issued by a bank under resolution except for secured liabilities subject to Article 155;
- h) to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of a bank under resolution and to cancel such shares or other instruments of ownership;
- i) to require a bank under resolution to issue new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments;
- j) to amend or alter the maturity of debt instruments and other eligible liabilities issued by a bank under resolution or amend the amount of interest payable under such instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to Article 155;
- k) to close out and terminate financial contracts or derivatives contracts in the spirit of applying articles 185 to 189;
- l) to replace the managing body of a bank under resolution;

(2) The National Bank of Moldova shall ensure that the resolution authority requires the supervisory authority to assess the purchaser of a participation stock in the bank's equity that fall under paragraph (1) of Article 45 of Law no. 202/2017 On Banks Activity in a timely manner, by derogation from the terms set in that Law.

Article 232 - (1) When applying the resolution tools and exercising the resolution powers, the National Bank of Moldova, in its capacity of resolution authority, is not required to meet any of the following requirements that would normally apply by virtue of the law, of a contract or in another way:

- a) requirements regarding getting the approval, authorization or consent of any public or private entity, including the shareholders or creditors of the bank under resolution, without prejudice to Article 5;
- b) without prejudice to the procedural requirements of this law, the procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

(2) For purposes of paragraph (1), and in particular in the spirit of exercising the powers under Article 231, it is not subject to any restrictions for the transfer of financial instruments, rights, assets or liabilities and any requirements for getting any consent for performing such a transfer, which would otherwise be applicable.

(3) Any transfer of shares or other instruments of ownership, financial instruments, rights, assets or liabilities, including any collateral or ancillary thereto shall be performed by the effect of the decision of the National Bank of Moldova, in its capacity of resolution authority, and, where applicable, of any subsequent act for the implementation thereof, and any formal requirements for registering in a real estate register, commercial register or other public register shall be performed based on this decision and, where applicable, on any subsequent implementation act.

SECTION 2

Ancillary powers

Article 233 - (1) While applying resolution powers, the National Bank of Moldova, in its capacity of resolution authority, may:

- a) subject to Article 271, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, any right of compensation in accordance with this Law shall not be considered to be a liability or an encumbrance, the order being opposable to public registers as well;
- b) remove rights to acquire further shares or other instruments of ownership at the bank under resolution;
- c) require the National Commission for the Financial Market or the relevant authority of another country to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to the capital market law;
- d) provide for the recipient to be treated as if it were the bank under resolution in the spirit of any rights or obligations of, or actions taken by the bank under resolution, including, subject to articles 94 to 106 and articles 110 to 121, any rights or obligations relating to participation in a market infrastructure.
- e) require the bank under resolution or the recipient to provide the other with information and assistance; and
- f) cancel or modify the terms of a contract to which the bank under resolution is a party or substitute the bank under resolution by a recipient as a party.

(2) The National Bank of Moldova, in its capacity of resolution authority, shall exercise the powers specified in paragraph (1) where it is considered by the resolution authority to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.

Article 234 - (1) When exercising a resolution power, the National Bank of Moldova has the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient.

(2) Continuity arrangements provided at paragraph (1) shall include, in particular:

- a) the continuity of contracts entered into by the bank under resolution, so that the recipient assumes the rights and liabilities of the bank under resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the bank under resolution, expressly or implicitly in all relevant contractual documents;
- b) the substitution of the recipient for the bank under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

Article 235 - The provisions at the letter d) of paragraph (1) of Article 233 and at the letter b) of paragraph (2) of Article 234 shall not affect the following rights:

- a) the right of an employee of the bank under resolution to terminate a contract of employment;
- b) subject to articles 246 to 258, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the bank under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

SECTION 3 **Other powers**

Article 236 - (1) The National Bank of Moldova, in its capacity of resolution authority, has the power to require an bank under resolution, or any of its group entities, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.

(2) Paragraph (1) shall apply including where the bank under resolution or relevant group entity has entered into forced bank wind-up proceedings according to relevant applicable legislation.

Article 237 - The services and facilities referred to in Article 236 are restricted to operational services and facilities and do not include any form of financial support.

Article 238 - The services and facilities provided in accordance with Article 236 shall be on the following terms:

a) according to the already agreed contractual terms, including with regard to the contract's duration, where the services and facilities were provided to the bank under resolution under an agreement concluded immediately before the resolution action was taken;

b) where there is no agreement or where the agreement has expired, on reasonable terms.

Article 239 - In cases in which resolution action involves action taken in respect of assets located in another country or shares, other instruments of ownership, rights or liabilities governed by the law of another country, the National Bank of Moldova, in its capacity of resolution authority, may require that:

a) the administrator, receiver or other person exercising control of the institution under resolution and the recipient take all necessary steps to ensure that the transfer, write down, conversion or action becomes effective;

b) the administrator, receiver or other person exercising control of the institution under resolution hold the shares, other instruments of ownership, assets or rights or discharge the liabilities on behalf of the recipient until the transfer, write down, conversion or action becomes effective;

c) the reasonable expenses of the recipient properly incurred in carrying out any action required under letters a) and b) are met in any of the ways referred to in Article 91.

Article 240 - (1) Where the National Bank of Moldova, in its capacity of resolution authority, assesses that, in spite of all the necessary steps taken by the administrator, receiver it is highly unlikely that the transfer, conversion or action will become effective in relation to certain assets located in another country or certain shares, other instruments of ownership, rights or liabilities under the law of another country, the National Bank of Moldova shall not proceed with the transfer, write down, conversion or action.

(2) To apply paragraph (1), if it has already ordered the transfer, write down, conversion or action, that order shall be void in relation to the assets, shares, instruments of ownership, rights or liabilities in the countries concerned.

Article 241 - A crisis prevention measure or a crisis management measure taken in relation to a bank in accordance with this Law, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the bank, be deemed to be an enforcement event or insolvency proceedings within the meaning of Article 2 of this Law.

Article 242 - Article 241 applies provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

Article 243 - Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

a) exercise any termination, suspension, modification, netting or set-off rights:

b) obtain possession, exercise control or enforce any security over any property of the bank;

c) prejudice the bank's contractual rights.

Article 244 - articles 241 to 243 shall not affect the right of a person to take an action referred to in Article 243 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

Article 245 - A suspension or restriction under this Law shall not constitute non-performance of a contractual obligation in the spirit of articles 241-242 of this Law.

Article 246 - (1) The National Bank of Moldova, in its capacity of resolution authority has the power to suspend any payment or delivery obligations pursuant to any contract to which a bank under resolution is a party, including those resulting from ancillary arrears or penalties related to those contracts, from the publication of a notice of the suspension in accordance with Article 286, for a term of up to 2 months. Under justified circumstances this term may be extended up to 6 months, through a decision of the National Bank of Moldova.

(2) When a payment or delivery obligation would have been due during the suspension period the payment or delivery obligation shall be due immediately upon expiry of the suspension period.

Article 247 - If an bank under resolution's payment or delivery obligations under a contract are suspended under paragraph (1) of Article 246, the payment or delivery obligations of the bank under resolution's counterparties under that contract shall be suspended for the same period of time.

Article 248 - Any suspension under paragraph 1 Article 246 shall not apply to:

- a) covered deposits;
- b) payment and delivery obligations owed to systems or operators of systems, as defined by Law 183/2016 on the Finality of Settlements in the Financial Instruments Payment and Clearing Systems, central counterparties, and central banks;
- c) eligible claims for offsetting under the provisions on investor offsetting in the capital market legislation.

Article 249 - Under articles 246 to 248, the National Bank of Moldova, in its capacity of resolution authority, shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 250 - (1) The National Bank of Moldova, in its capacity of resolution authority, shall have the power to restrict secured creditors of a bank under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Article 286 until midnight in Moldova at the end of the business day following that publication.

(2) The National Bank of Moldova, in its capacity of resolution authority, shall not exercise the power referred to in paragraph (1) in relation to any security interest of systems or operators of systems designated in the spirit of Law 183/2016 on the Finality of Settlements in the Financial Instruments Payment and Clearing Systems, central counterparty, and central bank over assets pledged or provided by way of margin or collateral by the bank under resolution.

Article 251 - When exercising a power under Article 250, the National Bank of Moldova, in its capacity of resolution authority, shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 252 - The National Bank of Moldova, in its capacity of resolution authority, shall have the power to suspend the termination rights of any party to a contract with a bank under resolution from the publication of the notice pursuant to Article 286 until midnight in Moldova, at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

Article 253 - (1) The National Bank of Moldova, in its capacity of resolution authority, shall have the power to suspend the termination rights of any party to a contract with a subsidiary, that is a legal entity from Moldova, of a bank under resolution where:

- a) the obligations under that contract are guaranteed or are otherwise supported by the bank under resolution;
- b) the termination rights under that contract are based solely on the forced bank wind-up or financial condition of the bank under resolution; and

c) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient, when the National Bank of Moldova, in its capacity of resolution authority, exercises or may exercise the transfer power with regard to the bank under resolution;

d) The National Bank of Moldova, in its capacity of resolution authority, provides by any other means adequate protection of the liabilities when the National Bank of Moldova, in that capacity, exercises or may exercise the transfer power with regard to the bank under resolution.

(2) The suspension under paragraph (1) shall take effect from the publication of the notice pursuant to Article 286 until midnight in the state where the subsidiary of the bank under resolution is established on the business day following that publication.

Article 254 - Any suspension under Article 252 or Article 253 shall not apply to systems or operators of systems designated in the spirit of Law 183/2016 on the Finality of Settlements in the Financial Instruments Payment and Clearing Systems, central counterparties, or central banks.

Article 255 - A contractual party may exercise a termination right under a contract before the end of the period referred to in Article 252 or 252 if that person receives notice from the National Bank of Moldova, in its capacity of resolution authority, that the rights and liabilities covered by the contract shall not be:

a) transferred to another entity; or

b) subject to write down or conversion on the application of the bail-in tool in accordance with point a) of Article 152.

Article 256 - Where the National Bank of Moldova, in its capacity of resolution authority, exercises the power specified in articles 252 to 253 to suspend termination rights, and where no notice has been given pursuant to Article 255, those rights may be exercised on the expiry of the period of suspension, subject to articles 241 to 245, as follows:

a) if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;

b) if the rights and liabilities covered by the contract remain with the bank under resolution and the National Bank of Moldova, in its capacity of resolution authority, has not applied the bail-in tool in accordance with letter a) of Article 152 to that bank, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under Article 252.

Article 257 - When exercising powers under articles 252 to 256, the National Bank of Moldova, in its capacity of resolution authority, shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 258 - (1) The National Bank of Moldova may require a bank to maintain detailed records of financial contracts, either in its capacity of competent authority or in its capacity of resolution authority.

(2) Upon the request of the National Bank of Moldova, in its capacity of competent authority or in its capacity of resolution authority, the entities that keep necessary information about financial contracts shall make it available to enable the NBM to fulfil its responsibilities.

Article 259 - (1) In order to take a resolution action, the National Bank of Moldova, in its capacity of resolution authority, is able to exercise control over the bank under resolution, so as to:

a) operate and conduct the activities and services of the bank under resolution with all the powers of its shareholders and managing body; and

b) manage and dispose of the assets and property of the bank under resolution.

(2) The control referred to in paragraph (1) may be exercised directly by the National Bank of Moldova, in its capacity of resolution authority, or indirectly by a person or persons appointed by the National Bank of Moldova.

(3) Voting rights conferred by shares or other instruments of ownership of the bank under resolution cannot be exercised during the period of resolution.

Article 260 - The National Bank of Moldova, in its capacity of resolution authority, is able to take a resolution action through executive order without exercising control over the institution under resolution.

Article 261 - The National Bank of Moldova, in its capacity of resolution authority, decides in each particular case whether it is appropriate to carry out the resolution action through the means specified in Article 259 or Article 260, having regard to the resolution objectives and the general principles governing resolution, the specific circumstances of the bank under resolution.

CHAPTER VIII

Safeguards

Article 262 - Where one or more resolution tools have been applied by the National Bank of Moldova, in its capacity of resolution authority, and, in particular in the spirit of Article 266, it means:

a) where only parts of the rights, assets and liabilities of the bank under resolution are transferred, the shareholders and those creditors whose claims have not been transferred receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under the forced bank wind-up proceedings at the time when the decision referred to in Article 282 was taken, except where point (b) applies;

b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the bank under resolution had been wound up under forced wind-up proceedings immediately at the time when the decision referred to in Article 282 was taken.

Article 263 - (1) In the spirit of assessing whether shareholders and creditors would have received better treatment if the bank under resolution had entered into forced wind-up proceedings, including but not limited to for the purpose of Article 262, the National Bank of Moldova, in its capacity of resolution authority, shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action or actions have been effected.

(2) The valuation shall under paragraph (1) shall be distinguished from the valuation under articles 72-84:

Article 264 - The valuation under Article 263 shall determine:

a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the bank under resolution with respect to which the resolution action or actions have been effected had entered forced wind-up proceedings at the time when the decision on applying or not applying resolution tools was taken;

b) the actual treatment that shareholders and creditors have received, in the resolution of the bank under resolution; and

c) if there is any difference between the treatment referred to in point a) and the treatment referred to in point b).

Article 265 - Besides the aspects covered by Article 264, the valuation under Article 263 shall:

a) assume that the institution under resolution with respect to which the resolution action or actions have been effected, would have entered forced wind-up proceedings at the time when the decision on applying or not applying resolution tools was taken;

b) assume that the resolution action or actions had not been effected;

c) disregard any provision of extraordinary public financial support to the institution under resolution.

Article 266 - Where the valuation carried out under articles 263-265 determines that, in the resolution context, any shareholder or creditor referred to in Article 262 has incurred greater losses than it would have incurred in a winding up under forced wind-up proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

Article 267 - Protection under paragraph (1) of Article 268 applies when:

a) the National Bank of Moldova, in its capacity of resolution authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person;

b) the National Bank of Moldova, in its capacity of resolution authority, exercises the powers specified in paragraph (1) of Article 233.

Article 268 - (1) In the context of resolution, the following arrangements and of the counterparties to the following arrangements enjoy appropriate protection under articles 269 to 276, with the application of restrictions under articles 241 to 258:

a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;

b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

c) set-off arrangements under which two or more claims or obligations owed between the bank under resolution and a counterparty can be set off against each other;

d) netting arrangements;

e) covered bonds;

f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

(2) The requirement under paragraph (1) applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:

a) are created by contract, trusts or other means, or arise automatically by operation of law;

b) arise under or are governed in whole or in part by the law of another country.

Article 269 - (1) There is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under such an arrangement between the bank under resolution and another person and the modification or termination of rights and liabilities that are protected under such an arrangement through the use by the National Bank of Moldova of ancillary powers.

(2) In the spirit of the paragraph (1), rights and liabilities are to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

Article 270 - Notwithstanding Article 269, when it is necessary to ensure availability of guaranteed deposits, the National Bank of Moldova, in its capacity of resolution authority, may:

a) transfer covered deposits which are part of any of the arrangements mentioned in Article 269 without transferring other assets, rights or liabilities that are part of the same arrangement; and

b) transfer, modify, terminate or wind up those assets, rights or liabilities without transferring the covered deposits.

Article 271 - (1) The liabilities secured under a security arrangement enjoy appropriate protection so as to prevent one of the following:

- a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
- b) the transfer of a secured liability unless the benefit of the security are also transferred;
- c) the transfer of the benefit of the security unless the secured liability is also transferred; or
- d) the modification or termination of a security arrangement through the use of ancillary powers by the National Bank of Moldova, if the effect of that modification or termination is that the liability ceases to be secured.

(2) Notwithstanding paragraph (1), where necessary in order to ensure availability of guaranteed deposits the National Bank of Moldova, in its capacity of resolution authority, may:

- a) transfer guaranteed deposits which are part of any of the arrangements mentioned in paragraph (1) without transferring other assets, rights or liabilities that are part of the same arrangement; and
- b) transfer, modify, terminate or wind up those assets, rights or liabilities without transferring the guaranteed deposits.

Article 272 - There shall be appropriate protection for structured finance arrangements including arrangements referred to at the letters e) and f) of Article 268 so as to prevent either of the following:

- a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to at the letters e) and f) of paragraph (1) of Article 268, to which the bank under resolution is a party;
- b) the modification or termination or winding up through the use of ancillary powers by the National Bank of Moldova of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to at the letters e) and f) of paragraph (1) of Article 268, to which the bank under resolution is a party.

Article 273 - Notwithstanding Article 272, to ensure availability of the covered deposits the National Bank of Moldova, in its capacity of resolution authority, may:

- a) transfer covered deposits which are part of any of the arrangements mentioned in Article 272 without transferring other assets, rights or liabilities that are part of the same arrangement; and
- b) transfer, modify, terminate or wind up those assets, rights or liabilities without transferring the covered deposits.

Article 274 - The application of a resolution instrument shall not affect either the systems defined by the Law no. 183 from July 22, 2016 regarding the finality of settlements in payment and settlement systems for financial instruments or their functioning, when the National Bank of Moldova, in its capacity of resolution authority:

- a) transfers some but not all of the assets, rights or liabilities of a bank under resolution to another entity; or
- b) uses powers under this Law to cancel or amend the terms of a contract to which the bank under resolution is a party or to substitute a recipient for the bank under resolution as a party.

Article 275 - Any transfer, removal or modification of the terms under Article 274 shall take into account the enforceability of the netting and transfer orders shall not prevent the use of funds, securities or credit arrangements or ancillary guarantee protection and shall be made in compliance with Article 276.

Article 276

In the course of implementation of the provisions of articles 274 and 275 there should be applied provisions of the Law regarding the finality of settlements in payment and settlement systems for financial instruments no. 183 from July 22, 2016.

CHAPTER IX

Procedural obligations

SECTION 1

Notification requirements

Article 277 - The bank's managing body shall notify the National Bank of Moldova, in its capacity of competent authority, where they consider that the bank is failing or likely to fail, within the meaning specified in Article 59.

Article 278 - The National Bank of Moldova shall make sure that the authority exercising the supervisory function informs the authority exercising resolution functions about any notification under Article 277 and any crisis prevention measure or any measure under Articles 139 and 141 of Law no. 202/2017 On Banks Activity to be taken by a bank.

Article 279 - (1) Where the National Bank of Moldova, in its capacity of competent authority or resolution authority, as applicable, determines that the conditions under letters a) and b) of paragraph (1) of Article 58 are met with regard to a bank, it shall notify about this conclusion without delay:

- a) the Bank Deposits Guarantee Fund, so that it performs its tasks;
- b) Ministry of Finance;
- c) designated national macro-prudential authorities.

(2) The National Bank of Moldova should make sure that the structure exercising the supervisory or resolution function, as applicable, also sends the findings specified at paragraph (1) to the authority that carries out the functions of a central bank.

Article 280 - Where the transmission of information does not guarantee the appropriate level of confidentiality, the National Bank of Moldova, in its capacity of competent authority or resolution authority, as applicable, shall establish alternative communication procedures that allow for meeting the communication requirement under this Law, while ensuring the appropriate level of confidentiality.

SECTION 2

The decision and procedural obligations of resolution authorities

Article 281 - The National Bank of Moldova shall ensure that, when receiving a notification from the supervisory authority under Article 279, the resolution authority determines, as provided by paragraph (1) of Article 58, the extent the conditions laid down in that Article have been met in relation to the bank.

Article 282 - The decision to apply or not to apply resolution measures to a bank shall include the following information:

- a) the reasons of the decision and the proceedings for assessing whether the conditions for resolution have or have not been met;
- b) the action that the bank resolution authority intends to take including, where appropriate, the determination to withdraw the license, to apply for winding up, the appointment of an administrator or any other measure under applicable forced wind-up proceedings.

Article 283 - The National Bank of Moldova, in its capacity of resolution authority, shall meet all requirements under articles 284-286 with regard to any resolution action immediately after it becomes reasonably possible.

Article 284 - (1) The National Bank of Moldova, in its capacity of resolution authority, notifies the bank under resolution about the resolution measure, as applicable:

- a) Bank Deposits Guarantee Fund
- b) Ministry of Finance;
- c) designated national macro-prudential authorities.
- d) operators of the systems to which the bank is a participant, where applicable.

(2) The National Bank of Moldova should make sure that the structure exercising resolution function also notifies about the action specified at paragraph (1) the authority that carries out the functions of a central bank.

Article 285 - The National Bank of Moldova, in its capacity of resolution authority, shall send alongside the notification under Article 284 copies of any decision through which relevant powers are exercised and specifies the day on which the resolution actions produce effects.

Article 286 - The National Bank of Moldova, in its capacity of resolution authority, shall publish or ensure the publication of either the decision on applying a resolution action or a notification summarising the effects of the resolution action, in particular the effects on retail clients and, where applicable, the condition and period of suspension or limitation under articles 246 to 258, by the following means:

- a) on its official website;
- c) on the website of the institution under resolution;
- d) where the shares, other instruments of ownership or debt instruments of the bank under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the bank under resolution in accordance with national provisions on capital market transparency.

Article 287 - If the bank's shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the National Bank of Moldova, in its capacity of resolution authority, shall ensure that the documents providing proof of the decision referred to in Article 286 are sent to the shareholders and creditors of the bank under resolution that are known through the registers or databases of the bank under resolution which are available to the National Bank of Moldova, in its capacity of resolution authority.

SECTION 3 **Confidentiality**

Article 288 - The requirements of professional secrecy with regard to the information managed under this Law shall be binding in respect of the following persons:

- a) National Bank of Moldova, in its capacity of resolution authority, competent authority and central bank;
- b) Ministry of Finance;
- c) special administrators or temporary administrators appointed under this Law;
- d) potential acquirers that are contacted by the National Bank of Moldova, in its capacity of competent authority, or solicited by the National Bank of Moldova, in its capacity of resolution authority, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;

e) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the National Bank of Moldova, in its capacity of resolution authority or competent authority, by the Ministry of Finance or by the potential acquirers referred to at the letter d);

f) the Bank Deposit Guarantee Fund, in its capacity of manager of the deposit guarantee system and of the resolution financing mechanism;

g) other authorities involved in the resolution process;

h) the bridge bank or the asset management vehicle;

j) any other person who provide or has provided services directly or indirectly, permanently or occasionally, to entities referred to at the letters (a) to (h);

j) members of the managing body, and employees of the bodies or entities referred to in letters a) to h) before, during and after their appointment;

k) member of the Government.

Article 289 - With a view to ensuring that the confidentiality requirements laid down in this Law are complied with, the persons at the letters a), b) and f) to h) of Article 288 shall draw up and put in place internal rules, including rules to secure secrecy of information and information sharing between persons directly involved in the resolution process.

Article 290 - (1) Without prejudice to the generality of the requirements under Article 288, the persons referred to in that Article shall be prohibited from disclosing confidential information received during the course of their professional activities or from the National Bank of Moldova, in its capacity of competent authority or resolution authority, in connection with its functions under this Law, to any person or authority unless:

a) disclosure takes place while carrying out tasks under this Law;

b) information is provided in a general or aggregate form, so that the banks cannot be identified;

c) there is an express consent of the authority, bank or entity that has provided the information.

(2) The persons referred to in Article 288 shall assess the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits.

(3) The persons or entities referred to in Article 288 shall be subject to civil liability in the event of an infringement of articles 288 to 291.

Article 291 - (1) articles 288 to 291 do not prevent:

a) the employees and experts of the entities referred to at the letters a) to g) of Article 288 from sharing information among themselves within each entity;

b) the National Bank of Moldova, in its capacity of competent authority or resolution authority, including its employees and experts, from sharing information with each other and with other countries' authorities that carry out equivalent functions to the National Bank of Moldova, in its capacity of resolution authority, or, subject to strict confidentiality requirements, to a potential acquirer in the spirit of planning or carrying out a resolution action.

(2) Notwithstanding any other provision of this Law, the exchange of information is authorised:

a) subject to strict confidentiality requirements, with any other person where necessary in the spirit of planning or carrying out a resolution action;

a) with investigation commissions of the Parliament of Moldova, of the Court of Accounts;

c) with national authorities responsible for forced wind-up of the bank, the authorities supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and the employees in charge of on-site inspections acting on their behalf, with the authorities responsible for maintaining the stability of the financial system in other countries through the use of macro prudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged with carrying out statutory audits;

(3) The provisions of this section shall be without prejudice to the penal law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

CHAPTER X

Right of appeal and exclusion of other actions

Article 292 - The decisions of the National Bank of Moldova to take a crisis prevention measure or exercise one of the powers under this Law, other than those regarding crisis management measures, may be appealed and are subject to legal review in administrative courts in the conditions of articles 11-11¹ of the National Bank Law 548-XIII dated July 21, 1995.

Article 293 - (1) Decision of the National Bank of Moldova to undertake a measure or exercise a competence as stipulated by this law may be appealed and may be subject to legal review in administrative courts as per conditions of articles 11-11¹ of the National Bank Law 548-XIII dated July 21, 1995.

(2) When the appeal in court is used, the review shall be expeditious.

Article 294 - (1) The lodging of an appeal under Article 293, against a decision taken by the National Bank of Moldova shall not entail any automatic suspension of the effects of the challenged decision.

(2) When applying paragraph (1), the decision taken by the National Bank of Moldova shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

(3) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of a bank under resolution by virtue of the use of resolution tools or exercise of resolution powers by the National Bank of Moldova, in its capacity of resolution authority, the annulment of a decision under paragraph (1) shall not affect any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the National Bank of Moldova, in its capacity of resolution authority, shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act, if such loss is not covered from the resolution financing arrangement as provided by this Law.

(4) The provisions of art. 144¹ para. (1)-(5) of the Law no. 202/2017 On Banks Activity shall apply, mutatis mutandis, to the granting of compensations according to para. (3).

(5) The provisions of art. 144² of the Law no. 202/2017 On Banks Activity shall apply, mutatis mutandis, to the granting of compensation to persons who held the status of shareholder of the bank, on the date of issuance of the decision provided in points a) and b) of this paragraph, for the damage caused by:

a) an illegal decision to submit the bank to the resolution; or

b) an illegal decision which has the effect of ceasing the ownership of the shares of the bank subject to the resolution.

Article 295 - Without prejudice to any restriction on the enforcement of security interests imposed pursuant to this Law, if necessary for the effective application of the resolution tools and powers, the National Bank of Moldova may request the court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which a bank under resolution is or becomes a party.

TITLE V

Resolution financing arrangements

Article 296 - To ensure the effective application of the resolution instruments and powers by the National Bank of Moldova, in its capacity of resolution authority, a resolution financing arrangement shall be established, whose funds shall be used in accordance with the resolution objectives and the principles referred to in articles 55 to 57 and articles 61 to 65.

Article 297 - The resources of the resolution financing arrangement shall be managed by the Bank Deposit Guarantee Fund, as provided by this Law.

Article 298 (1) - The resolution financing arrangement shall be supplemented, to ensure adequate resources, from the following financial sources:

- a) annual contributions to reach the target level;
- b) outstanding contributions when the contributions under letter a) are insufficient in the opinion of the National Bank of Moldova, in its capacity of resolution authority, and
- c) borrowings and other support under the law.

(2) The level of annual and extraordinary contributions by banks to the resolution financing arrangement is set by the National Bank of Moldova, in its capacity of resolution authority, while complying with the provisions of this Law.

(3) Banks shall pay to the Bank Deposit Guarantee Fund the contributions under paragraph (2) within the terms set by the National Bank of Moldova, in its capacity of resolution authority.

(4) The National Bank of Moldova, in its capacity of resolution authority, may provide that the share of irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the Bank Deposit Guarantee Fund for the purposes specified in Article 301 shall not exceed 30% of the total amount of contributions raised in accordance with this Law.

(5) The annual and extraordinary contributions by banks to the resolution financing arrangement are recognized as deductible expenses from the tax perspective.

Article 299 - (1) The Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, must invest available funds of the resolution financing arrangements in low risk assets, in a sufficiently diversified manner.

(2) The Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, must determine the strategy for investing the funds of the resolution financing arrangements and review it regularly, at least once a year.

(3) The key objectives of the strategy for investing the funds of the resolution financing arrangements are to minimize risk and placement liquidity, and the return on investment shall be a complementary objective. The criteria for selecting placements shall be quantified and prioritized on the basis of these three objectives.

(4) Under articles 296 to 313, 'low risk assets' has the meaning defined in the regulations of the National Bank of Moldova.

Article 300 - The funds of the resolution financing arrangement are used according to the decision of the National Bank of Moldova, in its capacity of resolution authority, and only in the spirit of Article 301.

Article 301 - (1) The National Bank of Moldova, in its capacity of resolution authority, decides to use the funds of the resolution financing arrangement to cover the needs related to the application of resolution tools, namely:

- a) to guarantee the assets or the liabilities of the institution under resolution, a bridge bank or an asset management vehicle;
- b) to make loans to the bank under resolution, a bridge bank or an asset management vehicle;

- c) to purchase assets of the bank under resolution;
- d) to make necessary contributions to a bridge bank and an asset management vehicle;
- e) to pay compensation to shareholders or creditors in accordance with this Law;
- f) to make a contribution to the bank under resolution in lieu of the write down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the bank resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with this Law;
- g) to lend to other financing arrangements on a voluntary basis in accordance with this Law;
- h) to repay contracted loans and associated costs;
- i) to take any combination of the actions referred to at the letters a) to h).

(2) The financing arrangements may be used to take the actions referred to in the first paragraph also with respect to the eventual purchaser in the context of the sale of business tool.

Article 302 - The resolution financing arrangement shall not be used directly to absorb the losses of a bank or to recapitalise such a bank. In the event that the use of the resolution financing arrangement for the purposes in Article 301 indirectly results in part of the losses of a bank being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in articles 154 to 163 shall apply.

Article 303 - (1) The target level for the available financial means of the resolution financing arrangement shall be 3% of the amount of covered deposits of all the banks licensed in Moldova.

(2) The level specified in paragraph (1) shall be reached by December 31, 2024.

Article 304 - (1) When applying Article 303, the National Bank of Moldova, in its capacity of resolution authority, the level of yearly contributions by banks to the resolution financing arrangement shall be set so as it is spread out in time as evenly as possible, but with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing banks.

(2) the National Bank of Moldova, in its capacity of resolution authority, may extend the term provided under paragraph (2) of Article 303 by which the target level must be reached, by 4 years maximum, if total payments made from the resolution financing arrangement exceed 0.5% of the amount of covered deposits of all the banks licensed in Moldova.

Article 305 - (1) Once the term referred to in Article 303 expires, and the target level is reached, the National Bank of Moldova, in its capacity of resolution authority, may decide to suspend payment of yearly contributions, which may resume when available financial means diminish below the target level, at least until the target level is reached. The National Bank of Moldova, in its capacity of resolution authority, may decide that contributions shall restart earlier than that.

(2) After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

(3) The National Bank of Moldova, in its capacity of resolution authority, shall set the level of yearly contributions for the situations covered by this Article, with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing banks.

Article 306 - (1) The National Bank of Moldova, in its capacity of resolution authority, determines the yearly contribution of each bank pro rata to the amount of its liabilities (excluding own funds) less guaranteed deposits, with respect to the aggregate liabilities (excluding own funds) less aggregate guaranteed deposits of all the institutions licensed in Moldova.

(2) The contributions determined according to paragraph (1) shall be adjusted by the National Bank of Moldova, in its capacity of resolution authority, in proportion to the risk profile of each bank and communicated to the Bank Deposit Guarantee Fund, in its capacity of manager of the resolution financing arrangement, with a view to collect them.

Article 307 - (1) In the spirit of determining the early contributions, each bank shall submit necessary information to the National Bank of Moldova, in its capacity of resolution authority, in the form required.

(2) When a bank does not pay the contributions under this Law, the Bank Deposit Guarantee Fund shall notify immediately the National Bank of Moldova, in its capacity of resolution authority, with a view to take necessary action.

(3) In the cases referred to in paragraph (2), the National Bank of Moldova may debit the current account of the bank by the amounts due.

(4) The application of penalties to a bank for failure to comply with articles 296 to 313 is not conducive to the exemption of the bank from payment of the liabilities for the financial exercise during each the penalties have been applied.

Article 308 - Funds collected under this Law may be used exclusively in the spirit of Article 301. Earnings on investment of the funds of the resolution financing arrangement may be used according to the law governing the functioning of the Bank Deposit Guarantee Fund.

Article 309 - Subject to this Law, the amounts received from the bank under resolution or the bridge bank, the interest and other earnings on investments and any other earnings from managing the resolution financing arrangement may benefit the financing arrangements.

Article 310 - (1) Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the resolution financing arrangement, extraordinary ex-post contributions required by the National Bank of Moldova, in its capacity of resolution authority, are raised from the banks, while complying with the provisions of this Law.

(2) Extraordinary ex-post contributions shall not exceed three times the annual amount of contributions determined in accordance with articles 306 to 309.

Article 311 - articles 307 to 309 apply when determining extraordinary ex-post contributions.

Article 312 - (1) The National Bank of Moldova, in its capacity of resolution authority, may defer, in whole or in part, an institution's payment of extraordinary ex-post contributions to the resolution financing arrangement if the payment of those contributions would jeopardise the liquidity or solvency of the institution. Such a deferral shall not be granted for a period of longer than six months but may be renewed upon the request of the bank.

(2) The contributions deferred pursuant to this Article shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

Article 313 - The Bank Deposit Guarantee Fund shall be able to contract borrowings or other forms of support from banks or other third parties in the event that the amounts raised in accordance with articles 306 to 309 are not sufficient to cover the losses, costs or other expenses incurred by the use of the resolution financing arrangement, and the extraordinary ex-post contributions provided for in articles 310 to 312 are not immediately accessible or sufficient.

TITLE VI

Penalties and measures

Article 314 - (1)

(2) The National Bank of Moldova has the power to collect all necessary information and to conduct all necessary investigations with a view to perform its functions.

(3) The powers referred to in paragraph (2) include:

a) the power to require all information necessary to fulfil the duties assigned to the National Bank of Moldova at regular intervals and in specified formats;

- b) the power to conduct all necessary investigations to fulfil the duties assigned to the National Bank of Moldova, in connection with any individual or legal entity referred to in paragraph (4);
- c) the power to conduct all necessary investigations at the offices of the legal entities referred to in paragraph (4);
- d) the power to request, when it's needed, from any person to provide all information needed for exercising the competencies that belong to the National Bank of Moldova.

(4) For purposes of letter a) of paragraph (3) the following are subject to provision of information:

- a) banks;
- b) individuals affiliated to banks;
- c) third parties to which the banks have outsources certain operational functions or activities.

(5) The powers referred to at the letter b) of paragraph (3) include the rights:

- a) to require submission of documentation;
- b) to examine the books and records of the persons referred to in paragraph (4) and pick up copies or extracts from such books and records;
- c) obtain written or oral explanations from any person under paragraph (4) or the representatives or staff;
- d) to interview any person with his consent, for the purpose of collecting information relating to the subject of research.

(6) The National Bank of Moldova, in its capacity of competent authority and resolution authority, exercises its powers to apply penalties and measures under this Law in any of the following ways:

- a) directly;
- b) in collaboration with other authorities;
- c) by delegating its powers to other authorities, while keeping responsibility of the delegated powers;
- d) by application to the competent judicial authorities.

(7) The National Bank of Moldova should make sure that the structure exercising the resolution function and the structure exercising the supervisory function cooperate closely with each other to ensure the application of the penalties and measures that produce sought effects.

Article 315 – (1) The National Bank of Moldova, in its capacity of resolution authority, has the power to apply penalties and measures under Article 316 when its concludes that the following fact have been produced, but without limiting to them:

- a) failure of the bank to comply with the decision of the National Bank of Moldova adopted in its capacity of resolution authority, to shift from simplified requirements to the implementation in full of the requirements of articles 9 to 22 and articles 23 to 31, as well as with the compliance term;
- b) failure of the bank to meet the requirement to assist the National Bank of Moldova in drawing up and updating the resolution plan, pursuant to Article 27;
- c) failure of the bank to meet the requirement to inform the National Bank of Moldova about any changes that might determine a reassessment or change in plans, pursuant to paragraph (2) of Article 28;
- d) failure of the bank to meet the requirement to keep and/or provide evidence of financial contracts concluded by it, pursuant to paragraph (1) of Article 30;
- e) failure of the bank to meet the requirement to cooperate and provide all necessary information for drawing up resolution plans, including information and analyses specified in Section B of the Annex, pursuant to paragraph (1) of Article 31;
- d) failure of the bank to meet the requirement to submit proposals on measures seeking to manage or eliminate obstacles, pursuant to paragraph (1) of Article 37, hence the plan to comply with the alternative measures prescribed by the National Bank of Moldova, pursuant to paragraph (1) of Article 38;

- g) failure of the persons concerned to comply with any of the measures prescribed by the National Bank of Moldova, pursuant to Article 39;
 - h) failure of the bank to satisfy the request to contact potential buyers or comply with the conditions for contacting potential buyers, according to Article 43;
 - i) failure of the bank to meet the requirement to prove that any decision of the resolution authority seeking to write down or convert the amount of liabilities subject to the law of another state could be applied under Article 169;
 - j) failure of the bank to meet the minimum requirements for own funds and eligible liabilities;
 - k) failure of the governing body of the bank to meet requirements regarding the drawing up, delivery, amendment, implementation or revision of the reorganization plan;
 - l) failure of the bank to meet requirements related to the issuance of core own funds instruments or possession of a prior authorization for this purpose;
 - m) failure of the bank to meet the requirement to provide information and assistance under Article 233;
 - m) failure of the bank to meet the requirement to provide necessary services and facilities under Article 236;
 - o) failure of the bank to meet the requirement to report and/or pay the contribution under Article 307;
 - p) failure of the bank to meet the requirement to pay the yearly or extraordinary ex-post contribution under Article 310;
- (2) The National Bank of Moldova, in its capacity of competent authority, has the power to apply penalties and measures under Article 316 in the following situations:
- a) failure of the bank to comply with the decision of the National Bank of Moldova adopted in its capacity of resolution authority, to shift from simplified requirements to the implementation in full of the requirements of articles 9 to 22 and articles 23 to 31, as well as with the compliance term;
 - b) failure of the bank to meet the requirements to draw up, upkeep, update, amend and submit recovery plans;
 - d) failure of the bank to meet the requirement to keep evidence of financial contracts to which the bank is a party;
 - d) failure of the bank to meet the requirement to set monitoring indicators and include them in the recovery plans;
 - e) failure of the governing body of the bank to meet the requirement to notify about the decision to take or not take a measure included in the recovery plan;
 - g) failure of the persons concerned to comply with any of the measures prescribed by the National Bank of Moldova, pursuant to Article 42;
 - h) failure of the bank to satisfy the request of the National Bank of Moldova under Article 45, to replace the managing body of the bank, as a whole, or some members thereof;
 - i) failure of the governing body of the bank to meet the requirement to consult the provisional manager or get his consent for taking certain decisions or action under Article 46;
 - j) failure of the governing body of the bank to meet the requirement to give notice that the bank is failing or likely to fail, under Article 277;
- (3) The National Bank of Moldova, in its capacity of competent authority and/or resolution authority, has the power to apply penalties and/or measures under Article 316 for violation of the provisions of this Law and of the regulations issued by the National Bank of Moldova in the areas regulated by this Law, to the extent at which the violations do not fall under paragraphs (1) and (2).
- Article 316 - (1)** Penalties that may be applied when the facts provided by Article 315 occur are:
- a) written warning;
 - b) public warning that names the natural person, bank or other responsible legal person and the infringement committed;

c) fine applicable to legal persons, of up to 10% of the total annual net turnover of that legal person in the preceding business year;

d) fine applicable to natural persons, up to MDL 1 million;

e) administrative fine of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

(2) Penalties that may be applied when the facts provided by Article 315 occur are:

a) order that the individual or legal person ceases unlawful conduct and refrains from resuming it;

b) temporary prohibition of certain functions in a bank to any member of the managing body of the said bank.

(3) The measures provided in paragraph (2) may be applied simultaneously with the penalties or independently.

(4) The individuals who are members of the governing bodies of banks are responsible for the fulfilment by the banks of all the requirements of this law and regulations issued by the National Bank of Moldova within the scope of this law, according to their powers and competences provided by applicable law and internal regulations of the respective banks. In this respect, for the facts set out in Article 315, the penalties and measures specified in paragraphs (1) and (2) can be applied to the bank and/or the individuals who are members of the governing bodies which can be attributed to the act, as it would not have been produced if these individuals would have properly exercised their powers and duties deriving from the functions entrusted to them.

Article 317 - (1) The National Bank of Moldova, in its capacity of resolution authority, or, where appropriate, in its capacity of competent authority, shall publish forthwith on its official website, the penalties imposed under Article 316 that have not been challenged under articles 11-11¹ of the National Bank Law 548-XIII dated July 21, 1995, as well as those the appeals on which have been rejected definitively, the information on the type and nature of the infringement and the identity of the penalized natural or legal person, after he/it was informed of the sanction.

(2) The National Bank of Moldova, in its capacity of resolution authority or, where appropriate, competent authority, shall publish the penalties without specifying the identity of the penalized natural or legal persons, in any of the following circumstances:

a) where the penalty is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

c) where publication would cause, insofar as it can be determined, disproportionate damage to the banks or natural persons involved.

(3) Where the National Bank of Moldova, in its capacity of resolution authority or, where appropriate, competent authority, shall anticipate that the circumstances of paragraph (2) shall cease in a reasonable term, it may postpone the publication of the administrative penalties, without specifying the identity of the penalized natural or legal persons, until the circumstances cease to exist.

(4) The information published under paragraph (1) or (2) shall be kept by the National Bank of Moldova on its official website for at least 5 years. The personal data is kept only as long as necessary, while complying with the legislative framework on the protection of personal data.

Article 318 - (1) The penalties and measures applied under Article 316 need to be effective and proportionate to the facts identified, and likely to have a deterrent effect.

(2) When determining the type of penalty or measure and the amount of the fine, the National Bank of Moldova, in its capacity of competent authority and resolution authority, shall take into account all the factual and personal circumstances of the offense that it deems relevant, including the following, where applicable:

a) the gravity and the duration of the infringement;

- b) the degree of responsibility of the natural or legal person responsible;
- c) the financial strength of the natural or legal person responsible, for example, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- d) the amount of profits gained or losses avoided by the natural or legal person responsible, to its benefit, insofar as they can be determined;
- e) the losses for third parties caused by the infringement, insofar as they can be determined;
- f) level of cooperation of the individual or legal entity in charge with the National Bank of Moldova, in its capacity of competent authority and resolution authority;
- g) previous infringements by the natural or legal person responsible;
- h) any potential systemic consequences of the infringement.

Article 319 - (1) The facts described in this Title shall be identified by the empowered staff of the National Bank of Moldova, based on the reports submitted by the bank under the law or upon the express request of the National Bank of Moldova, or during the inspections carried at their premises.

(2) The acts that prescribe penalties and/or measures under this Title shall be issued by the Governor, First Vice Governor or Vice Governors of the National Bank of Moldova, except the measure at the letter b) of paragraph (2) of Article 316, the application of which stands with the executive committee of the National Bank of Moldova. In case the penalty and/or measure is applied, the act must include at least the elements for the identification of the person responsible, the description of the infringement and its circumstances, the legal reasons for applying the penalty and/or measure and the applied penalty and/or measure.

(3) The acts by which penalties and/or measures are ordered under this Title may be appealed in the conditions of articles 11-11¹ of the National Bank Law 548-XIII dated July 21, 1995.

(4) The application of the penalties and measures provided for in Article 316 is prescribed within 3 years from the date of the infringement.

(5) Fines collected due to the application of penalties by the National Bank of Moldova under this law are revenues to the state budget.

(6) The application of penalties and/or measures under this Law does not remove the material, civil or criminal case, where applicable.

Article 320

In exercising its competencies and functions in the process of early intervention and bank resolution National Bank of Moldova can approve decisions and can immediately enforce measures as stipulated by this law, given the concrete circumstances, and it shall not be guided by the procedure from the article 75¹ of the Law on National Bank of Moldova, or any other requirements regarding the preliminary notification of any person, including of a bank, its shareholders, its managing body or other interested parties, except cases stipulated by this law.

Article 321

(1) If during the application of the resolution tools provided under this Law persons are identified, who would be attributable the condition from the article 58 para (1) bullet a) of this law with regards to the bank under resolution, then at the request of the National Bank, the special administrator, any creditor or shareholder of the bank the court may order that some or all bank liabilities subject to resolution to be covered by the members of the bank's management body and/or persons holding key positions in the bank, who have held the respective positions during the 3 years preceding the date that has been determined by the National Bank of Moldova as the date when the bank met the conditions triggering resolution as provided for in Article 58 of this Law, as well as any other person, including bank's shareholders or their ultimate beneficial owners, who contributed to the

realization of the condition from the article 58 para. (1) bullet a) of this law regarding the bank under resolution who committed by intention or by grave negligence one of the following acts:

- a) use of the bank's goods or credit to one's own benefit;
- b) carrying out commercial activity to personal benefit under the cover of the bank;
- c) fraudulent increase in the bank's liabilities and/or misappropriation of a part of the bank's assets;
- d) purchase of funds for the bank at exaggerated price;
- e) keeping fraudulent accounting records or accounting records that violate the Law, as well as contributing to the vanishing of the bank's accounting records, constitutive acts and seal.
- f) ordering continued activity of the bank that clearly leads to insolvency;
- g) ordering, in the month preceding the stopping of payment of pecuniary liabilities, the preferential payment to a creditor thus prejudicing the other creditors;
- h) lending by violating prudential requirements provided in normative acts, as well as lending by violating in-house requirements;
- i) drawing up financial reports, other accounting statements or reports by violating the provisions of normative acts;
- j) during internal auditing they have not identified and have not notified, by not fulfilling their duties, about the facts that have led to fraud and mismanagement of the bank's;
- k) any other act which has contributed to the failure of the bank under resolution;
- l) execution, or lack of execution, in bad faith or by negligence, of any act or fact related to the performance of duties needed for the identification of bank's ultimate beneficial owner who himself, or in a concerted action with other persons, is controlling a qualifying holding in bank's capital;
- m) execution, or lack of execution, in bad faith or by negligence, of any act or fact related to the performance of duties needed for obtaining from direct or indirect holders, or ultimate beneficial owners of the bank, as well as from other persons affiliated to the bank, of information needed for their identification;
- n) approval of any transactions with the persons mentioned in bullets m) and n) who led to the decrease in bank's own funds below the levels set by the normative acts of the National Bank.

(2) The application of paragraph.(1) does not preclude the application to the persons referred to in paragraph (1) of administrative or criminal penalties for acts that are identified as offenses or crimes. In this regard, the National Bank of Moldova shall ensure that the crime investigation authorities get all documents to be reviewed to identify where there are reasons (facts) that could trigger penal prosecution of that person.

(3) In cases of multiple parties, the persons referred to in paragraph (1) shall bear joint liability, provided that the failure of the bank under resolution is current or preceding the period in which they have exercised their mandate or have held positions that have led to bank's reaching this state. The persons concerned may absolve themselves from collective liability if they have objected, while on the collegiate governing bodies of the bank, to acts or deeds that have caused the failure of the bank under resolution or if they were absent when the decisions that have led to the failure of the bank under resolution were taken, and have taken care that pursuant to the decision making their objection to the decision was put on record.

(4) The measure provided for in paragraph (1) is prescribed within 3 years from the date on which it was known or should have been known who was the person who has caused the failure of the bank under resolution, but not earlier than 2 years from the date that has been determined by the National Bank of Moldova as the day when the bank met the conditions for resolution as provided by Article 58 of this Law.

(5) In all cases, the court shall rule regarding the request under paragraph (1) by a decision that can be challenged by appeal by the persons concerned.

(6) Alongside the request made under paragraph (1), the complainant may request the court to prescribe precautionary measures regarding the property of the persons prosecuted under paragraphs (1) to (3). The request to prescribe precautionary measures may also be made at a later time, after the request under paragraph (1) is submitted.

(7) The amounts collected under the provisions of paragraph (1) shall be supplemented to the bank's debit and be used to cover liabilities.

(8) Bailiffs shall enforce execution upon the persons concerned under paragraph (1), as prescribed by the Enforcement Code.

Article 322. (1) Provisions of article 3 para (2) of this law, as well as the obligations to inform, consult and other obligations of cooperation between “the structure exercising the resolution function” and “the structure exercising the supervisory function” shall be enacted starting with July 1, 2017. Until that date references in this law to “the structure exercising the resolution function” shall be read as references to “the structure exercising the supervisory function”.

(2) Provisions of this law which related the establishment, operation and other conditions regarding the bank resolution fund, as well as any conditions and references to it, shall be enacted starting with January 1, 2020.

(3) Provisions of this law regarding the bail-in tool, as well as any conditions and references to it shall be enacted starting with January 1, 2020.

(4) Condition stipulated under article 92 for the usage of public instruments of financial stabilization shall be enacted from January 1, 2024. Until that date, the Government has the right to decide on the financing by the Ministry of Finance of measures, actions and tools for resolution, through the issuance of state securities, granting state guarantees, as well as implementing other measures which have impact on the budget in order to ensure the needed financing, including over the limits set by the state budget law for the respective year. An increase in the limit of the domestic state debt shall be reflected in the subsequent amendments of the state budget law for the respective year. Until January 1, 2024, in case of forced bank liquidation, the receivable of the Ministry of Finance resulting from the realization of competences of issuance of state guarantees and state securities,

stipulated in the articles 96 and 112 of this law, has the same rank as receivables resulting from expenditures related to the liquidation process.

(5) For the implementation of provisions of the article 16 para (1), the banks which are functioning on the date of enactment of this law shall submit the recovery plans, drafted in compliance with the requirements thereof, within 120 days from the enactment date of this law.

(6) For the implementation of provisions of the article 23 para (1), National Bank of Moldova, as the resolution authority, drafts the resolution plans in compliance with the requirements of this law, within 180 days from its enactment date.

(7) Until the designated national macro prudential authority becomes operational, its functions shall be undertaken by the National Committee for Financial Stability, established on the basis of government's decision no. 449 from June 2, 2010.

(8) Within 6 months from the date of approval of this law the government shall approve and submit to the parliament a draft law on establishing the national macro prudential authority.

ANNEX

SECTION A

Information to be included by the banks in recovery plans:

- a) a summary of the key elements of the plan and a summary of overall recovery capacity;
- b) a summary of the material changes to the institution since the most recently filed recovery plan;
- c) a communication and disclosure plan outlining how the bank intends to manage any potentially negative market reactions;
- d) a range of own funds and liquidity actions required to maintain or restore the viability and financial position of the institution;
- e) an estimation of the timeframe for executing each material aspect of the plan;
- f) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
- g) identification of critical functions;
- h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;
- i) a detailed description of how recovery planning is integrated into the corporate governance structure of the bank as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
- j) arrangements and measures to conserve or restore the institution's own funds;
- k) arrangements and measures to ensure that the bank has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
- l) arrangements and measures to reduce risk and leverage;
- m) arrangements and measures to restructure liabilities;
- n) arrangements and measures to restructure business lines;

- o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
- p) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services;
- q) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
- r) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
- s) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;
- t) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

SECTION B

The information that may be required by the National Bank of Moldova, in its capacity of resolution, for drawing up and updating resolutions plans shall include at least the following:

- a) a detailed description of the bank's organisational structure including a list of all legal persons;
- b) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
- c) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
- d) a mapping of the bank's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
- e) a detailed description of the components of the bank's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
- f) details about the bank's eligible liabilities;
- g) an identification of the processes needed to determine to whom the bank has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
- h) a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
- i) the material hedges of the institution including a mapping to legal persons;
- j) identification of the major or most critical counterparties of the bank as well as an analysis of the impact of the failure of major counterparties in the bank's financial situation;
- k) each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;
- l) each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;
- m) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;
- n) an identification of the owners of the systems identified at the letter m), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;

- o) the identification and description of the legal entities and the interconnections and interdependencies between them, such as: employees, joint or shared facilities and systems or capital, funding or liquidity mechanisms or existing or contingent credit exposures, or individual cross-security agreements, cross collateral agreements, arrangements for cross-default clauses and cross-netting arrangements between affiliates or risk transfer arrangements and back-to-back trading arrangements; agreements on the provision of services;
- p) the competent and resolution authority for each legal person;
- q) the member of the managing body responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
- r) a description of the arrangements that the bank has in place to ensure that, in the event of resolution, the National Bank of Moldova, in its capacity of resolution authority, will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;
- s) all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
- t) a description of possible liquidity sources for supporting resolution;
- u) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

SECTION C

When assessing the resolvability of an institution or group, the National Bank of Moldova, in its capacity of resolution authority, shall consider the following:

- a) the extent to which the bank is able to map core business lines and critical operations to legal persons;
- b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
- c) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and own funds to support and maintain the core business lines and the critical operations;
- d) the extent to which the service agreements that the bank maintains are fully enforceable in the event of resolution of the institution;
- e) the extent to which the governance structure of the bank is adequate for managing and ensuring compliance with the bank's internal policies with respect to its service level agreements;
- f) the extent to which the bank has a process for gradual transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
- g) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
- h) the adequacy of the management information systems in ensuring that the National Bank of Moldova, in its capacity of resolution authority, is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
- i) the capacity of the management information systems to provide the information essential for the effective resolution of the bank at all times even under rapidly changing conditions;

- j) the extent to which the institution has tested its management information systems under stress scenarios as defined by the National Bank of Moldova, in its capacity of resolution authority;
- k) the extent to which the bank can ensure the continuity of its management information systems both for the affected bank and the new bank in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;
- l) the extent to which the bank has established adequate processes to ensure that it provides the National Bank of Moldova, in its capacity of resolution authority, with the information necessary to identify depositors and the amounts covered by the Bank Deposit Guarantee Funds;
- m) the amount and type of eligible liabilities of the bank;
- n) the existence and robustness of service level agreements;
- o) whether third-country authorities have the resolution tools necessary to support resolution actions by the bank resolution authorities, and the scope for coordinated action between national authorities and other countries' authorities;
- p) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the bank's structure;
- q) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that the authorities of other countries may take;
- r) the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;
- s) the extent to which the resolution of the bank could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
- t) the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;
- u) the extent to which the resolution of the bank could have a significant effect on the operation of payment and settlement systems.

VICECHAIRMAN OF THE PARLIAMENT
No. 232. Chişinău, 3 October 2016

Vladimir VITIUC