



**PARLIAMENT OF THE REPUBLIC OF MOLDOVA**

**LAW ON BANKS LIQUIDATION**

No. 550 of 21 July 1995

Official Monitor of the Republic of Moldova No. 1,  
Article 2, of 1 January 1996

The Parliament adopts the following organic Law.

**CHAPTER 1<sup>1</sup>**  
**GENERAL PROVISIONS**

**Article 1. Object of the Law**

This Law regulates This law establishes the rules applicable to the process of voluntary or forced liquidation of a bank and its purpose is to regulate an orderly procedure for the liquidation of the bank and its assets, in order to protect the legitimate interests of the bank's creditors.

**Article 2. Subjects of the law**

- (1) The current law applies to banks in liquidation and to bank liquidators.
- (2) The branch of the bank from another state, which carries out its activity on the territory of the Republic of Moldova and whose license has been revoked, is subject to liquidation under the conditions of this law.

**Article 3. Definitions**

The definitions used in this law have the meaning provided by Law no. 202/2017 On Banks Activity and Law no. 548/1995 on the National Bank of Moldova.

**CHAPTER VI<sup>1</sup>**  
**FORCED LIQUIDATION OF BANKS**

**Article 38<sup>1</sup>. General provisions on forced liquidation of banks**

- (1) In case of license withdrawal of a bank, following the detection of at least one of the situations of insolvency referred to in article 22 paragraph (2) of Law no. 202/2017 On Banks Activity, or of one of the grounds referred to in article 22, except for paragraph (1) letters f, g) and paragraph (3) of Law no. 202/2017 On Banks Activity, the National Bank shall take the decision to initiate the process of forced liquidation of the bank.
- (2) Liquidation of the bank on grounds other than that of insolvency shall not impede the initiation of forced liquidation under insolvency grounds if during the process of liquidation it was found that the bank had become insolvent.

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

(4) The Order of the National Bank on the appointment (replacement) of the liquidator shall be published within 7 days after its adoption in the Official Monitor of the Republic of Moldova.

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

a) the National Bank shall close the accounts in MDL of the respective bank and shall open a new account with the specification "bank in the liquidation process", where the available at that time funds will be transferred and through which the liquidator will conduct all operations in MDL of the bank to be liquidated;

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

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

(7) The process of liquidation of a bank shall not exceed 5 years from the date of the license withdrawal. The period may be extended by the National Bank for maximum two years, based on a reasoned request of the liquidator of the bank.

#### **Article 38<sup>2</sup>** Conditions for the appointment of a liquidator

(1) A individual who meets the criteria of reputation, knowledge and experience necessary for the performance of the duty, as set out in the normative acts of the National Bank, shall be appointed as liquidator of the bank.

(2) Liquidator cannot be the person who:

a) has criminal record;

b) in the last 5 years, has been held civilly liable for fictitious or simulated legal acts, acts affected by error, concluded by fraud, violence, following a fraudulent agreement or the violation of fiduciary obligations;

c) is accused in a criminal case or is defendant in a civil lawsuit;

d) has not satisfied his/her obligations to pay debts or interests rates to a bank;

(3) In order to determine the existence/non-existence of conflicts of interest, the liquidator shall submit to the National Bank, prior to his/her appointment, information on personal and business interests and on his/her financial relations, of his/her spouse and children, including on:

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

b) the relations over the last 5 years with any bank as employee, member of the management body, member of the audit committee, or shareholder of a qualifying holding;

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

d) the failure to satisfy the patrimonial obligations to the bank under liquidation or any other bank in the last 5 years;

e) the possession of a property competing with the bank properties if the bank's liquidation involves their evaluation, sale and management.

f) other financial and business interests that may affect the impartial exercise of the function of liquidator;

g) any other information required by the National Bank.

(4) Along with the information referred to in paragraph (3), the person shall submit information that

certifies the non-existence of any conflict of interest, following his/her personal interests and relations with the National Bank, and if such a conflict exists – information on such a conflict and, despite this fact, shall request the National Bank to authorize the activity of liquidator.

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

(6) If a conflict of interest occurs after his/her appointment, the liquidator shall immediately inform the National Bank of this fact as soon as it becomes aware of it, as well as on the actions that he has taken or will take to eliminate the conflict and shall require the permission of the National Bank to continue the activity.

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

(8) The liquidator shall perform impartially his/her duties. Thus the liquidator shall not be entitled to:

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

b) request or accept, directly or indirectly, any services, gifts, other valuables and benefits from any person about whom the liquidator knows that he/she intends to obtain certain benefits in connection with the liquidation of the bank or has interests that may be significantly affected by the execution/non-execution of certain duties by the liquidator;

c) use or permit the use of the assets of the National Bank or assets managed by the liquidator for his/her personal interest or for the third parties' interest, apart from the interests of the National Bank and other banks under liquidation;

d) making promises or assuming commitments on behalf of the National Bank without its authorization.

(9) The liquidator is not entitled to disclose the information that represents a commercial ,banking secrecy or any other secret protected by law, except if it is necessary in the exercise of his/her duties.

### **Article 38<sup>3</sup>.** Liquidation announcement

The liquidator shall:

a) within 3 days from the date of his/her appointment, make public an announcement with regard to the license withdrawal and the beginning of liquidation process in each of the separate unit of the bank, indicating the name and surname of the liquidator, the date and place where he takes over the bank management.

b) publish the announcement indicated in letter a) in the Official Monitor of the Republic of Moldova, in the newspapers of general circulation and in the newspapers where the bank separate units are located;

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

### **Article 38<sup>4</sup>.** Liquidator's main duties and rights

(1) The liquidator shall have full and exclusive rights to lead, manage and control the bank (hereinafter – management of the bank) and to take any measures for its efficient liquidation and for obtaining the maximum amount from the sale of assets, including the right to:

a) continue or terminate any operation of the bank;

b) borrow money guaranteed with bank assets or without guaranty;

c) suspend or limit the payment of obligations referred to in letter g) the fourth item;

d) employ specialists, experts or professional consultants;

- e) manage the bank's account;
  - f) collect the debts to the bank and recover its assets in possession of third parties, bring actions in the courts ;
  - g) perform any operations on behalf of the bank, taking into account the need to obtain the prior approval of the National Bank for the following operations:
    - sale or other form of liquidation of any asset of the bank worth more than MDL 1 million;
    - provision of guarantees based on the bank's assets in favor of the creditor that grants to the bank a new loan of over MDL 500 thousand;
    - reduction or cancellation of any claim against the bank, which validity is doubtful if this exceeds MDL 200 thousand;
    - satisfaction of any claims against the bank (except claims arising from commitments assumed by the liquidator in the exercise of its function) before the termination of procedures referred to in Article 38<sup>9</sup> and Article 38<sup>10</sup>, including the payment of debts to depositors and other creditors in the amounts which, according to the National Bank, may be used for this purpose, but also taking into account that all depositors and other creditors in similar situations shall be treated equally;
  - h) receive registers, documents and information from the management bodies and employees of the bank and from any other person;
  - i) formulate the objections against the claims of creditors submitted to the bank, negotiate the bank's obligations with a view to their novation, reduction, rescheduling, and acquisition by another person or remission of debts, terminate the bank's contracts in accordance with the legislation in force;
- (1<sup>1</sup>) Immediately after taking over the management of the bank, the liquidator shall take measures to ensure the integrity of bank assets, registers, documents and information, , and shall notify the separate units of the bank, correspondent banks, state registration authority, holders of public records, the central depository and registrar that maintains the register of holders of securities of the bank and, where appropriate, other persons with regard to license withdrawal, initiation of the process of forced liquidation of the bank, as well as communicate information about himself.
- (1<sup>2</sup>) At the request of the liquidator, the law enforcement authorities shall be obliged to assist him in obtaining access to premises and other assets of the bank, in taking over the control of the bank and in ensuring the integrity of assets, registers, documents and information of the bank.
- (2) The liquidator has also other duties and rights provided by this chapter.
- (3) While exercising his duties and rights, the liquidator shall be responsible solely to the National Bank.

**Article 38<sup>5</sup>** Effects of the initiation of liquidation procedure

- (1) In addition to the effects specified in article 23 paragraph (3) of Law no. 202/2017 On Banks Activity, from the date of the license withdrawal:
- a) the calculation of interests and penalties against bank's obligations shall be interrupted, while the unmatured obligations shall be matured; The bank shall not be liable for the breach of its obligations due to the fortuitous impossibility to satisfy them due to its license withdrawal;
  - b) claims to the bank shall be satisfied as provided by this chapter;
  - c) the exercise of any right on the bank's assets, including their foreclosure in connection with litigation and enforcement proceedings for the collection of claims, shall be suspended. No rights may be exercised over assets during the liquidation of the bank, except for the rights given to liquidator according to this chapter and claims on covering expenses related to the liquidation process;
  - d) the payments or transfers of bank's assets made before the beginning of the liquidation process to the detriment of the interests of creditors may be declared void, except for the payments up to the deposit guarantee limits for each depositor according to Law no.575-XV of December 26, 2003 on the guarantee of deposits in the banking system;

- e) the liquidator shall take over all vested rights of the bank's management bodies and become the sole legal representative of the bank. The liquidator may delegate to other persons only those powers which he considers necessary, if the National Bank does not establish otherwise;
  - f) the previous decisions adopted by the bank's management bodies shall be considered invalid if they are not approved (authorized) by the liquidator, as well as if they constitute an impediment in the exercise of his/her rights and duties;
  - g) operations in the bank account shall be suspended, foreclosure of assets of the bank shall be ceased, and the seizure and other restrictions applied on it shall be terminated;
  - h) acceptance and performance of payments on the corresponding accounts of the bank clients shall be ceased, while the payments collected after the date of license withdrawal shall be returned to the payers' accounts with the paying banks, unless the payments were accepted in a payment system subject to the Law No.183 of July 22, 2016 on settlement finality in payment and financial instruments settlement systems, and the provisions of art. 6 paragraph (3) of the cited law are applicable;
  - i) fulfillment of obligations to the bank shall be made directly in favor of the bank, even if pursuant to the clauses of the obligation, the debtor has the right to fulfill the obligation in favor of another person;
  - j) extinction of creditors' claims by offsetting mutual claims shall not be permitted, except for cases in which the right of the parties for compensation appeared before the date of license withdrawal as well as in connection with the maturity of claims of the respective class pursuant to the order of priority of established claims classes;
  - k) cession of creditor claims, following which the new creditor (assignee) will belong to a class of claims of a higher priority compared with the one to which the assignor belonged to shall not be permitted;
  - l) the mandate (power of attorney) issued by the bank shall be terminated, except for the case in which termination would cause damage to the bank;
  - m) creditors may submit their claims only within the process of liquidation, except for the claims on the payment of expenses related to the liquidation process.
- (2) The payments or transfers of bank assets made before the beginning of the liquidation process to the detriment of the interests of creditors shall be deemed to be the legal acts related to the:
- a) payment or transfer, made simultaneously, fictitiously or with the intention of all involved parties to conceal bank assets from foreclosure by creditors or otherwise harm their rights within 3 years prior to withdrawal of the license;
  - b) free transfer made during 2 years prior to the license withdrawal, except for those made for sponsorship and charity according to the law;
  - c) free transfer made with the bank affiliated persons during 2 years prior to license withdrawal;
  - d) payment or transfer where bank performance is obviously exceeding the one received, performed during one year prior to license withdrawal;
  - e) anticipated payments of debts performed during 6 months prior to license withdrawal if their maturity was set for a date subsequent to the date of license withdrawal;
  - f) constitution of a pledge by the bank or other collateral for a debt that was unsecured during 6 months prior to license withdrawal. This provision does not apply to payments or transfers effected within the systems covered by Law No.183 of July 22, 2016 on settlement finality in payment and financial instruments settlement systems;
- (3) The withdrawal of the bank's license shall not prevent the execution of payment orders/ transfer of securities orders initiated by the bank and entered into the payment/ securities settlement systems until the date and the exact time of the approval of the decision to withdraw the license.
- (4) Public utilities services providers holding a dominant position (supply of electricity, natural gas, water, telephone services, etc.) shall not be entitled to unilaterally refuse or interrupt the provision of

such services to the bank from the date of license withdrawal, even if the bank has not paid for the previously provided services. Reduction or interruption of services provision may take place only if the liquidator fails to pay, according to the contract, the services rendered after the withdrawal of the license.

(5) If a movable asset is sold to the bank and it is not fully paid at the time of license withdrawal, is in the process of transfer (transit) or the bank or other authorized persons have not yet come into the possession of this asset, the seller may re-enter into possession of this asset. In this case, the seller shall return any payments made in advance by the bank for the respective asset and shall have the right to submit claims for the expenses related to this transaction.

(6) If, according to the contract with the participating bank, the obligation of a party to enter into a transaction with shares becomes due after the withdrawal of the license, the contract shall be considered terminated at that time. In this case, the difference between the contract price and the value of shares as of the date of license withdrawal shall be paid to the bank, if it is a credit, or added to the bank debts, if it is a debt.

(7) Not later than the next day following the day of the takeover of the bank management by the liquidator, the executive bodies of the bank shall hand over the stamps and seals of the bank. Within the time limit established by the liquidator, any person holding the registers, documents, material values and other assets of the bank shall hand them over to the liquidator. In case of breach of these obligations, or of impeding liquidator's access to premises, assets, registers, documents, and information of the bank, the guilty person shall be liable according to the law.

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

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

b) the claim is included in the list of claims registered at the National Bank, but the creditor has submitted objections against it.

(9) Bank creditors may submit their claims within a term of 3 months from the date of withdrawal of bank's license. The creditors, who submitted their claims after the expiry of this period, but in all cases until the end of the distribution (liquidation) of all assets of the bank, may demand the satisfaction of their claims only pursuant Article 38<sup>11</sup> paragraph (6).

#### **Article 38<sup>6</sup>.** Liquidation procedure

(1) Within 3 months from the date the liquidator takes over the management of the bank, he shall make the inventory of the bank's assets and shall submit to the National Bank a copy thereof, which shall be permanently accessible to the public.

(2) The liquidator shall take the measures referred to in Article 38<sup>7</sup> through transparent procedures, in accordance with the legislation into force, so that other banks and other interested persons could make offers for these assets, if this chapter does not provide otherwise.

(3) The liquidator, from the date he takes over the management of the bank, may terminate the following contracts:

a) employment contract with any employee of the bank;

b) contracts for the supply of services to which the Bank is a party;

c) contracts for the lease of movable and immovable property, subject to notifying the owner with 30 days before about the fact that the bank exercises its discretionary right to terminate the lease contract. The owner shall not be entitled to seek recovery of payments for the termination of the lease contract. In case of liquidation, no damage related to the termination of lease contract shall be repaired.

- (4) Within 2 months from the date of taking over the management of the bank, the liquidator shall:
- a) take measures necessary to end the fiduciary obligations of the bank, return to the owner all assets and property held by the bank in custody and perform final settlement related to them;
  - b) send to the addresses indicated in the registers or hand in against signature, to all depositors, other creditors and clients of safe custody services, recorded delivery notices on the type and amount of their claims against the bank according to registers, and on the need to withdraw the goods by the clients of safe custody services. The notice shall state that the objections can be presented to the liquidator within one month from the receipt of the notice.
- (5) The goods kept safe in the bank, which have not been withdrawn by the owner before the date specified in the notice, shall be taken over by the liquidator to be transmitted afterwards to the owner as required by law.
- (6) The goods kept safe in the bank along with their registers, which have not been withdrawn by the owner, shall be considered goods that cannot be claimed by other creditors of the bank.
- (6<sup>1</sup>) The goods of the bank, constituting the object of collateral, shall be included in the composition (inventory) of bank assets, but are used to satisfy the pledgee's claims in the order of priority before satisfying other claims provided by this law.
- (6<sup>2</sup>) In case of insufficiency of funds obtained from the sale of the asset pledged to satisfy the claims of the pledgee or in case the creditor gives up his/her right of pledge, the unsatisfied claims shall be subject to satisfaction following the order of priority of classes of claims set forth in Article 38<sup>11</sup>.
- (7) The liquidator shall submit to the National Bank, upon its request, and at certain intervals, reports and information related to the bank's liquidation. The periodicity and the form of reports to be submitted by the liquidator under the provisions of this paragraph shall be established in the normative acts of the National Bank.
- (8) The provisions of this article, except paragraphs (2), (6<sup>1</sup>), (7) shall not be applied in case of bank sale according to Article 38<sup>7</sup> paragraph (1) letter a).
- (9) Liquidator shall ensure the publication on the bank's official website of the information on the results of the sale or other form of liquidation of the bank, pursuant to Article 38<sup>7</sup>, amounting to over MDL 1 million, including the price and the identity of the counterparty – individual or legal entity.

**Article 38<sup>7</sup>.** Actions taken by the liquidator. Procedure for the sale of the bank, transfer of its assets and liabilities

- (1) The liquidator shall take the following actions:
- a) with the written permission of the National Bank, sell the bank as a unique patrimonial complex to another bank (buying-bank), taking into account the provisions of this chapter;
  - b) organize the sale and/or partial transfer of the bank's assets and partial transfer of bank's liabilities to another bank;
- (1<sup>1</sup>) The actions taken by the liquidator in the operation of bank sale, of delivery of its assets and of its obligations, are to be funded by the Fund for the guarantee of deposits in the banking system in an amount not exceeding the amount of the guaranteed deposits.
- c) liquidate the bank's assets under the conditions of this chapter.
- (2) In order to perform the sale-purchase transaction provided under paragraph (1) letter a), the buyer - bank shall meet the following conditions:
- a) its regulatory capital shall not be less than the amount of the minimum capital established under Article 9 paragraph (1) of Law no. 202/2017 On Banks Activity;
  - b) its assets shall be greater than the net assets of the bank subject to sale;
  - c) after the transaction performance, the buying-bank shall meet the requirements of Article 8 paragraph (4) of Law no. 202/2017 On Banks Activity.
- (3) By derogation from the provisions of the Law no.1134-XIII of April, 2, 1997 on Joint Stock

Companies, the decision of the buying-bank on transaction conclusion, related to the purchase of the bank under liquidation or of its assets according to paragraph (1), shall be taken by:

a) the Board of the bank, with a simple majority of votes, if the transaction value is over 25 percent, but not less than 50 percent of the assets of the buying-bank according to the last balance sheet, before the adoption of the respective decision;

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

(4) The National Bank shall reject the application for issuing the permission for the sale of the bank if:

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

b) it appraises that the sale will lead to the breach by the buying-bank of the requirements related to the performance of financial activity provided by this Law and by the normative acts issued for its execution;

c) the documents submitted for the obtaining of permission contain incomplete, insufficient or contradictory information or the documents required additionally in order to take the decision on the issuance of permission to perform the transaction were not submitted,.

(5) In cases provided under paragraph (1) letters a) and b), the liquidator may reduce the amount of certain liabilities to ensure that the depositor or other creditor of the bank does not receive less than he would receive under the satisfaction of bank's obligations according to Article 38<sup>11</sup>.

(6) The liquidator shall select from the measures listed in paragraph (1) those which, in his/her opinion, lead to obtaining a maximum amount from the sale of the bank or its assets and protect the depositors' interests and of other creditors.

(7) While determining the amount that may be obtained from the sale of the bank or its assets, the liquidator shall be obliged to:

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

b) collect evidence on the assessment and assessment criteria, including the interest rate, the rate of assets' recovery, the cost of assets' maintenance and contingency expenses.

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

(9) In order to conclude the transactions referred to in paragraph (1) letters a) and b), the liquidator shall organize an informative meeting with all the banks considered eligible to present the terms and conditions of negotiation. Before the informative meeting, the liquidator shall sign with the banks attending the meeting an agreement of confidentiality whereby they undertake to keep, according to the law, the secrecy of information from the offer related to the bank under liquidation, its assets and liabilities that will be negotiated. Failure by the members of the governing body, shareholders, employees and other persons, acting on behalf of the bank that have signed the confidentiality agreement on the obligation to keep the secrecy, shall entail contraventional and material liability and the elimination of the respective bank from the participation in the tender.

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

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

(12) The liquidator shall ensure access of bidding banks to the documents and information related to

the bank and its assets and liabilities that will make the object of negotiations. The appeals of the stakeholders shall be examined in accordance with Article 144 paragraph (3) and paragraph (4) of Law no. 202/2017 On Banks Activity.

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

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

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

(16) In the event of conclusion of the transaction that envisages the transfer of bank's liabilities, the provisions of this Law on the registration at the National Bank of the list of claims to the bank, in respect of the transferred liabilities, shall not be applicable.

(17) If the assets to be transferred are not sufficient to cover the value of all liabilities of the bank, and the bank acquiring assets and liabilities (acquiring bank) has not given its consent for assuming all liabilities of the bank, only the liabilities that belong to one/some class(es) of claims in compliance with the order of priority of classes of claims established by Article 38<sup>11</sup> will be transferred. If the assets to be transferred are not sufficient to cover all liabilities in a class of claims, only a part of the liabilities to each creditor from the respective class of claims may be transferred.

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

(19) In case of transfer of assets and liabilities, the order of priority of satisfying claims pursuant to Article 38<sup>11</sup> shall be observed and none of the transfers of assets and liabilities shall be allowed if this will change the order of priority.

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

(21) The purchasing bank/acquiring bank shall be responsible only for the obligations assumed according to the conditions of transaction. The liabilities arising from the actions of the bank under liquidation on grounds of insolvency are considered extinguished.

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

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

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

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

(26) Liquidation of assets shall consist in realization of assets as to obtain funds to satisfy the creditors' claims and this shall be performed by the sale of assets such as buildings, land, securities,

receivables, or other methods, such as assignment of debts or novations at a negotiated value.

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

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

(29) The feasibility of the submitted bid offer shall be examined by the liquidator, taking into account his duty to liquidate the assets without undue delay and that the sale of assets is performed in short terms and the price may be smaller only when selling in more favorable circumstances.

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

#### **Article 38<sup>8</sup>.** Expenses related to liquidation process

(1) Expenses related to the bank's liquidation process shall be made prior to other claims against the bank on the account of its funds. These expenses shall include:

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

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

c) loans granted to the bank after the appointment of the liquidator.

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

(3) Labor remuneration of the persons that assist the liquidator in the liquidation process shall not be higher than the remuneration of the banks' employees for similar services.

(4) In case of insufficiency of funds for covering the expenses related to the bank's liquidation according to paragraph (1)-(3), the National Bank shall be entitled to cover them.

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

#### **Article 38<sup>9</sup>.** Measures preceding the satisfaction of claims against the bank

(1) Within 5 days from the date of license withdrawal on the grounds of insolvency, the liquidator, on the basis of registers and other data available at the bank, shall establish the amount due for each deposit guaranteed in accordance with the Law no.575-XV of December 26, 2003 on guaranteeing deposits in the banking system, shall prepare the list of claims related to these deposits and shall submit it to the Deposits Guarantee Fund.

(2) Within 2 months from the last date mentioned in the notice specified in Article 386 paragraph (4)

letter b), the liquidator shall:

a) reject claims which validity is doubtful;

(a1) rejects any claim of the bank's employees, bank's affiliated persons and service providers until their discharge of responsibility for the bank's liquidation, according to the provisions of Article 38<sup>15</sup>.

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

c) establish the list of claims validated in order to be registered at the National Bank;

d) notify in writing each person whose claim were not entirely validated;

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

(3) Creditors claims shall be established based on the registers, documents and other information available at the bank and in case of submission of claims by the written request of the creditor – based also on courts' judgments and other documents confirming the validity of claims.

(4) The value of the claim of the deponent with more than one deposit in the bank shall be established by summing up all the deposits.

(5) The amount of claims denominated in foreign currency shall be determined at the official exchange rate of MDL against the respective foreign currency as of the date of withdrawal of bank license, and shall be paid in MDL.

(6) The list of claims shall contain the first and last name, address (for individuals), and name, headquarters (for legal entity) of the creditor, the legal reason and the amount of claim. Challenged or litigated claims shall be entered separately in the challenged part, with the respective notes. Creditors whose claims are secured by collateral (secured creditors) shall be entered separately, indicating the collateral. Other relevant information needed for the satisfaction of claims may be included in the list of claims.

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

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

(9) The National Bank shall register the list of claims within 5 days from the date of its appropriate submission by the liquidator. Registration of the list of claims shall not be deemed to include examinations of each validated claim's merits, value, class of claim and their correction.

(10) Prior to starting the satisfaction of claims according to the respective class of claims, the liquidator shall publish at least in one newspaper of general circulation and in one newspaper where the banks offices were located, an announcement on the place, manner, and time limits of satisfaction.

(11) Where before starting the satisfaction of creditors' claims, the liquidator becomes aware of the litigations examined in the court between the creditor and the liquidator regarding the creditor's claim not included in the list of claims and submitted before the registration of the list of claims at the National Bank, he shall set apart funds for the proportionate satisfaction of the respective claim, within the limits of the funds available for the satisfaction of the class of claims to which this claim belongs.

**Article 38<sup>10</sup>.** Appeals on measures preceding the satisfaction of claims against the bank

(1) Within 20 days from the date of registering the list of claims at the National Bank, any depositor, any other creditor or one or more shareholders of the bank that hold at least 10% of shares with voting right may submit an appeal to the National Bank against the measures taken by the liquidator

specified in Article 38<sup>9</sup> paragraph (2) letters a) and b). The National Bank shall settle the appeal within one month from the date of its submission.

(2) In case the objections expressed in the appeal are reasoned, the National Bank shall issue an order on the amendment of the list of claims and of the mechanism proposed for their satisfaction.

(3) After the expiration of the time limit for settling the appeal indicated in paragraph (1), the list of claims registered at the National Bank can not be amended.

**Article 38<sup>11</sup>.** Satisfying claims against the bank and claims priorities

(1) The satisfaction of claims against the bank under liquidation shall be performed after the expiration of the time limit for settling the appeal provided under Article 38<sup>10</sup>, subject to their validation and to the registration of the list of claims at the National Bank, if this chapter does not provided otherwise.

(2) The claims related to deposits, guaranteed according to Law no. 575-XV of December, 26 2003 on guaranteeing deposits of in the banking system, shall be satisfied by the Deposit Guarantee Fund in the banking system in accordance with the aforementioned Law, after receiving the list of claims drawn up by the liquidator according to Article 38<sup>9</sup> paragraph (1).

(2<sup>1</sup>) Validated claims related to the salaries of bank's employees for the period of up to three months prior to the date of withdrawal of license, payment of annuities, repair of damages caused by mutilation or by another injury to health or death, as well as the claims of the Deposit Guarantee Fund in the amount of the compensations of any kind used for the settlement of the guaranteed deposits, shall be satisfied before satisfying the claims specified in paragraph (3).

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

- a) loans granted to the bank by the National Bank before the appointment of the liquidator;
- b) the claims of the Ministry of Finance, as a result of the payments performed or to be performed under the state guarantees or state securities pledging to guarantee the emergency credits granted by the National Bank of Moldova to the bank in cases of systemic financial crisis or threat of its occurrence, according to Article 18 paragraph (3) of the Law on the National Bank of Moldova no.548-XIII of 21.07.1995;
- d) the unpaid amounts on deposits, remained after the performance of payments according the Law no.575-XV din 26 December 2003 on guaranteeing deposits in banking system;
- e) the unpaid amounts on guaranteed deposits, other than the ones listed in letter d);
- f) the payments to the national public budget, settled from tax payers, which were not transferred on the respective accounts of the budgetary system;
- g) other claims.
- h) the payments to the national public budget, settled from tax payers, which were not transferred on the respective accounts of the budgetary system;
- i) other claims.

(3<sup>1</sup>) Creditors' claims that belong to one class of claims shall be satisfied after satisfying all the claims that belong to the preceding class of claims.

(3<sup>2</sup>) If within the period announced by the liquidator for the satisfaction of the claims, the creditor fails to appear to receive his/her claim, the liquidator shall deposit the funds due to this creditor to an account opened with another bank on behalf of the creditor.

(3<sup>3</sup>) The claims resulting from the application of the provisions of Article 52 paragraph (3) of Law no. 202/2017 On Banks Activity shall be honored in accordance with the provisions of paragraph (8) of this article.

(3<sup>4</sup>) The resources accumulated in the accounts of the bank undergoing liquidation are to be used for the settlement of its obligations regularly, so that the accumulation does not exceed at management dates the size required for the making of the expenses relating to the liquidation process for the 6-

month period.

(4) The claims validated on the basis of courts' judgments shall be satisfied according to the order of claims classes listed in paragraph (3), except for claims not registered on the list of claims in due time (unregistered claims), validated on the basis of judgments issued after the expiry of the term for settling the appeal under Article 38<sup>10</sup> paragraph (1), which shall be satisfied:

a) from the reserved funds – in cases provided by Article 38<sup>9</sup> paragraph (11);

b) after the satisfaction of claims of the respective class (but before satisfying the claims from the next class), if the payments of these claims have begun before the liquidator received the unregistered claims;

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

(5) If the amount available for the satisfaction of claims of one of the classes referred to in paragraphs (2<sup>1</sup>) and (3) is insufficient to cover them, the value of each claim in this class will be reduced proportionately.

(6) After the satisfaction of all validated claims, the claims remained valid and unregistered in due time in the list indicated in Article 38<sup>9</sup> letter c) will also be satisfied on the basis of the remaining assets after the payment of claims included in the list.

(7) The payment of subordinated debts shall be made after the satisfaction of claims of all creditors of the bank before satisfying the claims of shareholders according to paragraph (8).

(8) The assets remaining after the satisfaction of all claims against the bank shall be distributed to its shareholders and to former owners of holding in the bank's share capital against which the measures provided for in Article 156 par. (3) have been ordered, if the latter hold a claim against the bank resulting from the cancellation of its shares, according to their holdings.

(9) Claims unsatisfied due to insufficiency of bank's assets, as well as bank's liabilities in respect of which claims have not been submitted within the time limit, shall be deemed extinguished.

(10) The liquidator shall include in the list of claims the information on the satisfaction/extinction of creditors' claims.

#### **Article 38<sup>12</sup>. Reporting. Completion of liquidation process**

(1) After the distribution (liquidation) of all bank's assets, the liquidator shall submit a report to the National Bank. The report shall contain information on the value and classes of satisfied and unsatisfied creditors' claims, on realization of assets, on assets considered non-eligible or assets that have no value, and shall attach, where necessary, supporting documents and other required information. The liquidation balance sheet and other relevant documents of the bank shall be attached to the report.

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

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

#### **Article 38<sup>13</sup>. Responsibility of the liquidator**

(1) If the bank's liquidator does not comply with this law, the National Bank may apply sanctions and sanctioning measures against him according to art. 141 para. (1) and (5) of Law no. 202/2017 On Banks Activity or may dismiss him from office.

(2) Illegal actions committed by the liquidator in the course of his duties shall entail contraventional or criminal liability, according to law.

(3) The disputes and litigations arising between the liquidator, the National Bank and other persons

with regard to the bank's liquidation shall be settled according to Article 144 paragraph (4) of Law no. 202/2017 On Banks Activity.

**Article 38<sup>14</sup>.** Reopening the liquidation process

- (1) If, after the approval of the liquidator's report or erasure of the bank from the State Register of Legal Entities, some assets of the bank have been identified, the National Bank, at the request of creditors or ex officio, may decide to reopen the process of bank forced liquidation and, if necessary, may appoint a liquidator.
- (2) The funds obtained from the liquidation (realization) of identified assets shall be used to satisfy the claims of the entitled creditors according to the procedure set forth in this Law.
- (3) In case of appointment, the liquidator shall submit to the National Bank a report on the additionally liquidated (realized) assets and on the claims additionally satisfied.

**Article 38<sup>15</sup>.** Liability for a bank's insolvency

- (1) If during the process of liquidation of the bank, there were identified individuals who would be imputable the occurrence of insolvency of the bank, at the request of the National Bank, the liquidator of the bank, any creditor or shareholder of the bank, the court may order that a part or all debt of the insolvent bank be borne by the members of the bank's management body, as defined in Law no. 202/2017 On Banks Activity, who held the respective positions during the 3 years preceding the process of initiation of liquidation of the bank, as well as any other persons including the shareholders and beneficial owners of the bank who have contributed to the occurrence of insolvency of the bank committing intentionally or by gross negligence one of the following actions:
  - a) use of assets or bank loans for personal interest;
  - b) conduct commercial activity for personal interest under the coverage of the bank;
  - c) fictitiously increase bank's liabilities and / or misappropriate (concealment) a part of bank's assets;
  - d) acquiring funds for the bank at inflated prices;
  - e) run fictitious accounting or one that is contrary to the law, as well as contribute to the disappearance of accounting documents, documents of incorporation and the stamp;
  - f) order the bank to continue an activity that clearly leads to default;
  - g) order to pay a preferential creditor to the detriment of other creditors in the month preceding the termination of payment of pecuniary obligations;
  - h) failure to notify the National Bank according to Art. 22 paragraph (4) of Law no. 202/2017 On Banks Activity;
  - i) grant loans in violation of prudential requirements set by the legislation in force, and in non-compliance with national regulations;
  - j) prepare financial statements and other accounting statements or reports in violation of regulatory provisions;
  - k) fail to identify and refer facts that led to fraud and mismanagement of the bank during internal audits, in violation of duties,
  - l) any other offense committed that contributed to the occurrence of insolvency at the bank.
  - m) performance or omission to perform maliciously or negligently, any action or fact related to the performance of their duties, which was necessary to identify the final beneficial owner of the bank, alone or acting in concert with other persons, controls a qualified holding in the bank's capital.
  - n) performance or omission to perform maliciously or negligently any action or fact related to the performance of their duties, which was necessary to obtain from the direct or indirect holders, the beneficial owners or affiliated persons of the bank and from other persons affiliated to the bank, the information needed for their identification .
  - o) approval of any transaction with the persons mentioned at letters m) and n) which led to the

- decrease in the bank capital below the levels set out in the normative acts of the National Bank.
- (2) Application of para (1) provisions does not preclude the application of sanctions or criminal punishment for acts that constitute offenses or crimes by persons referred to in para (1). In this regard, the liquidator of the bank shall submit all documents to the prosecution to be examined in relation to the existence of grounds (facts) that could entail prosecution of that person.
- (3) In case of multiple subjects, liability of persons under para (1) is solidary, provided that the occurrence of insolvency is current or prior to the period during which they exercised their mandate or have held positions that could have caused the insolvency of the bank. The persons concerned may object to solidary liability to the management bodies of the bank, if they opposed to acts or facts that caused the insolvency or if they were absent from decision-making that caused insolvency and by doing so, showed their opposition to this decision after such decision was made.
- (4) The measure provided in para (1) shall be prescribed for a period of 3 years from the date on which the person which caused the insolvency was known or ought to have been known, but not earlier 2 two years from the date of issuing the decision to initiate the liquidation process of a bank.
- (5) In all cases, the application provided under par. (1) shall be subject to a court ruling which can be challenged by persons concerned.
- (6) The person making the application under paragraph. (1) may request the court to establish precautionary measures on the property of individuals prosecuted under par. (1) - (3). The application to establish precautionary measures may be filed after filing the application under par. (1).
- (7) The amounts collected under the provisions of par. (1) will form part of the bank's insolvency estate and will be aimed at covering its liabilities.
- (8) Enforcement against persons under par. (1) shall be carried out by a bailiff in line with the Enforcement Code.

## **Chapter VI<sup>2</sup>**

### **VOLUNTARY LIQUIDATION OF THE BANK**

#### **Article 38<sup>16</sup>.** Conditions of voluntary liquidation

- (1) The liquidation of the bank based on the decision taken by the shareholders (voluntary liquidation) shall be made under the procedure prescribed by the laws governing the liquidation of companies, taking into account the provisions of this Law.
- (2) The decision on voluntary liquidation of the bank may be taken by the general meeting of shareholders only if the bank is not insolvent. The decision of the general meeting of shareholders shall be adopted by the vote of at least two thirds of the total number of votes of the shareholders present at the meeting.
- (3) In case of approval of the decision on voluntary liquidation, the bank shall request the National Bank to withdraw the license and issue the permission for voluntary liquidation. The request shall be submitted to the National Bank within 5 days from the date of adoption of such decision by the general meeting of shareholders. To the request shall be attached the decision on voluntary liquidation, the liquidation plan approved by the general meeting of shareholders, that shall include the liquidation phases, procedure and terms of satisfying the creditors' claims, the balance sheet that confirms the sufficiency of funds to satisfy the claims, information on the composition of the liquidation commission (appointed liquidator) and other necessary data.
- (4) The National Bank shall examine the request within 2 months from the date of submission of the required documents and shall issue the permission for voluntary liquidation if it establishes that:
- a) the decision on voluntary liquidation of the bank was taken according to the legislation;
  - b) the bank is solvent and may execute without delay the obligations to creditors;
  - c) documents submitted contain complete and sufficient information;

- d) the proposed plan of liquidation is in the interests of bank creditors;
  - e) the bank has submitted within the established time limit additional documents requested by the National Bank, needed to determine whether the conditions for issuing the permission are met.
- (5) Upon issuance of permission for voluntary liquidation, the National Bank shall withdraw the license of the bank.

**Article 38<sup>17</sup>.** Voluntary liquidation procedure

(1) After the withdrawal of the license and the issuance of the permission for voluntary liquidation, the liquidation commission (liquidator) shall take over all powers to administrate the patrimony and the operations of the bank.

(2) The liquidation commission (liquidator) shall:

a) Submit to the state body of registration, within 5 days from the date of withdrawal of license, the application for liquidation of the bank, attaching the necessary documents, including the act of license withdrawal and the permission on the voluntary liquidation of the bank;

b) publish notices regarding the liquidation;

c) conduct an inventory of assets, a valuation of assets, satisfy claims of creditors, and shall take other necessary measures for the liquidation of the bank.

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

a) expenses related to liquidation;

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

c) personal deposits;

d) loans granted to the bank, unsecured by collateral;

e) deposits of legal entities and of individual enterprises;

f) claims referred to in Article 38<sup>11</sup> paragraph (3) letters f) and g), in the appropriate order.

(4) The liquidation commission (liquidator) shall submit to the National Bank the liquidation balance sheet within 5 days from the date of its completion.

(5) The voluntary liquidation of the bank shall not prevent the initiation of forced liquidation of it if, during the voluntary liquidation process, it is found that the bank is insolvent

(6) If it is found that the bank is insolvent, the liquidation commission (liquidator) shall immediately notify the National Bank in order to initiate the process of forced liquidation and shall submit the report and documents certifying the financial situation of the bank.

(7) Within 15 days, the National Bank shall examine the documents submitted under paragraph (6) and, if one of the grounds referred to in paragraph Article 22 paragraph (2) of Law no. 202/2017 On Banks Activity is met, the National Bank shall take the decision stating the insolvency of the bank and shall initiate the process of its forced liquidation.

**CHAIRMAN OF THE PARLIAMENT**

**PETRU LUCINSCHI**  
**Chisinau, July 21, 1995**  
**No. 550-XIII**