

# THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA

## Law on Financial Institutions

The Parliament has adopted the following law

Article 1. Scope of the law.....	2
Article 2. Institutions covered by present law .....	2
Article 3. Main definitions .....	2
Article 4. Licensing authority.....	4
Article 5. Minimum capital .....	4
Article 6. License application.....	4
Article 7. License decision .....	5
Article 8. Scope of license. Authorized copies of license. Fees.....	6
Article 9. Register of banks.....	6
Article 10. Revocation of a license .....	6
Article 11. Publication and effect of license revocation .....	7
Article 12. Prohibitions.....	7
Article 13. Organizations and independence of banks .....	7
Article 14. Capital.....	8
Article 15. Restrictions on ownership and holdings .....	8
Article 16. Reorganizations of banks .....	9
Article 17. Charter and by-laws .....	9
Article 18. Administrative and control structure of banks.....	9
Article 19. Board of Directors.....	9
Article 20. Audit Committee.....	10
Article 21. Requirements to administrators .....	10
Article 22. Commercial secrecy, banking secrecy and fiduciary obligations.....	10
Article 23. Money Laundering .....	11
Article 24. Conflicts of interest.....	11
Article 25. Prudential requirements.....	11
Article 26. Financial activities allowed to banks .....	12
Article 27. Prohibited anticompetitive transactions and practices.....	12
Article 28. Prudential measures .....	13
Article 29. Records of financial institutions.....	14
Article 30. Public notification.....	14
Article 31. Transactions with employees of the bank and with related persons.....	14
Article 32. Provision of credits .....	15
Article 33. Accounts and financial statements .....	15
Article 34. External audit.....	15
Article 35. Publication of balance sheet, auditor's opinion, annual report .....	15
Article 36. Examinations of branches .....	15
Article 37. Reports and inspection .....	16
Article 38. Infractions, penalties and remedial measures .....	16
Article 39. Transitional provisions.....	18
Article 40. Supervision and regulation of the financial institutions' activity .....	18
Article 41. Regulations of the National Bank.....	18
Article 42. Dispute settlement .....	18
Article 43. Final dispositions.....	18

**Note:** This is an unofficial translation. Only the original Romanian texts of acts and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of acts and regulations.

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1. Scope of the law

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

#### Article 2. Institutions covered by present law

- (1) This law shall apply to financial institutions except for who, by virtue of the nature or size of their business or the origin of their resources, shall be exempt from the operation of this Law in whole or in part by the National Bank.
- (2) The National Bank has the right to make financial institutions other than banks, additionally subject to provisions of this Law, that refer to bank activities.

#### Article 3. Main definitions

The following definitions are used in this law:

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

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

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

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

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

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

**debt security** - means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security by subscription or exchange. Negotiable debt securities may be in certificate or in book-entry form;

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

**subordinate debt** - means a sum of money placed on terms:

- that is not ensured;
- that the maturity term is 5 years at least. If the maturity does not provide a fixed term, the debt is to be repaid on demand by the holder within a term of 5 years at least from the date of placement and providing the preliminary granting by the National Bank of Moldova of the permission issued under conditions of Art. 7 paragraph (2);
- that is not reimbursed before maturity, except cases of bank liquidation;
- that in case of bank liquidation, is to be repaid after redemption of claims by all creditors of the bank, but before redemption of claims by shareholders;
- that may be considered as component of the regulated capital under terms established by the National Bank;

**deposit** - means a sum of money paid on terms:

- that is to be repaid, with or without interest or premium of any kind, and either on demand or at a time or in circumstances agreed by or on behalf of the depositor (person making the payment) and depositary (person receiving it for keeping);
- that are not referable to the provision of property or services or the giving of security;
- whether or not evidenced by any entry in a record of the person receiving the sum, or by any receipt, certificate, note or other document;

**household deposits** - means deposits of individuals;

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

- any dividend consisting only of shares of the institution or rights to purchase such shares;
- any amount paid on deposits of a cooperative bank that the National Bank determines is not a distribution for purposes of article 28, paragraph 4;

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

- current financial situation of the borrower and of any person other person, which constitutes a personal guarantee;
- a description of methods to guarantee the full payment of indebtedness and eventually an
- evaluation of goods that make the object of the guarantee;
- a description of credit terms and conditions, including the amount of credit, the interest rate,
- the reimbursement schedule, the objective of the debtor and the purpose of the credit;
- the document with the signatures of persons authorizing credit provision on behalf of the bank;
- other documents determined by the bank;

**branch office** - means a separate entity, that is a legally dependent part of a bank and that conducts all or some financial activities;

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

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

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

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

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

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

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

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

## CHAPTER II

### LICENSING OF BANKS

#### **Article 4. Licensing authority**

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

#### **Article 5. Minimum capital**

- (1) The minimum amount subscribed and paid in the bank's capital is established in the quantum of 100 million lei.
- (2) Shares shall be paid integrally with funds.

#### **Article 6. License application**

- (1) Licenses for financial activity in accordance with Article 26, shall be applied for in writing to the National Bank in such form as it is prescribed and shall be accompanied by the following: a) information on qualifications and experience of the administrators of the proposed financial institution, including professional history for the past ten years; b) information on the expected paid in capital of the proposed financial institution; c) a business plan for the proposed financial institution, setting out the organizational structure, the types of financial activities envisaged, and projected financial statements for the first three years etc.; d) information on the name, residence, and business or professional history for the past 10 years and ownership interest of each person who

proposes to own the equivalent of 5 percent or more of any class of voting stock of the bank. For the purpose of this provision, the proposed ownership interest of affiliated persons shall be aggregated to determine the amount of the proposed ownership interest;  
e) such additional information as shall be prescribed by regulation of the National Bank.

- (2) The National Bank may request an applicant to submit additional information for its license application if, in the opinion of the National Bank, the basic information submitted is insufficient.
- (3) The license concerning a branch office or subsidiary of a foreign bank shall applied for by the foreign bank as shall be prescribed by the National Bank regulations.

#### **Article 7. License decision**

- (1) Within 3 months from the date of its receipt of an application for a license that has been completed to the satisfaction of Article 6, the National Bank shall grant preliminary approval or deny the application and notify the applicant of its decision in writing. Decisions refusing a license shall include an explanation of the grounds on which the license was refused. The grounds for denial of an application may include that the information submitted is insufficient to determine whether the applicant meets the criteria in paragraph (2).
- (2) The National Bank shall grant a license only if it is assured that:
  - a) the bank will comply with the provisions of this Law;
  - b) the qualifications, experience, and integrity of its administrators and shareholders with significant interest are appropriate for its business plan and for the financial activities that the bank will be licensed to engage in;
  - c) the financial condition of the bank will be satisfactory.
- (3) After preliminary approval of an application, the National Bank shall set the following requirements for the bank to receive the license:
  - a) the payment of the bank initial capital that shall not be less than the minimum capital required;
  - b) the hiring of the specialists;
  - c) signing an agreement with an auditing firm, in accordance with Article 34;
  - d) the lease or purchase of operations equipment and bank premises.
- (4) If a bank fails to comply within one year with the enumerated requirements, the preliminary approval of the application for a license shall become void.
- (5) If the requirements described are satisfied, the National Bank shall issue the license within one month.
- (6) Licenses concerning a branch offices and subsidiaries of foreign bank shall be granted only if:
  - a) the foreign bank is authorized to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located;
  - b) the competent foreign authorities that supervise the financial activities at the head office of the foreign bank concerned have given their written consent to the granting of such license;
  - c) the National Bank determines that the foreign bank is adequately supervised on a consolidated basis by such foreign authorities.
- (7) Financial institutions carrying out some financial activities that are not defined as banks under this Law are issued licenses as shall be prescribed by the National Bank.

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

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

- (1) The license shall be granted for an indefinite period of time and shall not be transferable.
- (2) Banks shall be issued authorized copies of the license for each branch or another separate subdivision of the bank, where the activity based on the issued license will be carried out.
- (3) The fee for license issuance shall be established at 50.000 lei.
- (4) The fee for issuing the authorized copy of the license, for reissuance of license/authorized copy of the license, as well as the fee for the issuance of the duplicate of the license /of the authorized copy thereof shall be established at 450 lei.
- (5) The amounts of the fees under paragraphs (3) and (4) are transferred to the state budget and shall not be refunded in case the bank/branch or another separate subdivision of the bank does not commence business or ceases operations.

**Article 9. Register of banks**

- (1) A register of authorized banks shall be kept by the National Bank that shall record for each licensed bank the name, the head office and branch office addresses, and copies of the documents listed in Article 17. This register shall be opened for the public.
- (2) A copy of the register of authorized banks shall be kept for public inspection by each regional office of the National Bank.
- (3) Banks whose licenses have been revoked shall be removed from the register through respective record.

**Article 10. Revocation of a license**

- (1) The National Bank may revoke the bank license only:
  - a) upon a request of the bank;
  - b) following an infraction pursuant to Article 38;
  - c) the license has been obtained on the basis of false information submitted by or concerning the applicant;
  - d) the bank has not commenced operations within twelve months after the receipt of the license or has ceased for more than 6 months to engage in the business of receiving money deposits or other repayable funds;
  - e) another bank that holds a significant ownership interest in the bank has had its license revoked;
  - f) a reorganization or sale of substantially all the assets of the bank has occurred;
  - g) the holder of a significant interest in the bank has transferred or otherwise lost such interest without the prior written consent of the National Bank;
  - h) the owners of the bank have decided to liquidate the bank, or the bank has ceased to exist as a legally independent entity;
  - i) the financial activities of the bank during its first three years of operation differ substantially from those presented in the application for a license and in the opinion of the National Bank, such deviation is not justified by changed economic circumstances;

- j) the owners of the bank do not observe legal provisions to ensure prudent management of the bank or do not allow performance of efficient supervision.
- (2) When a bank requests that the National Bank revoke its license, the National Bank shall decide on the request within thirty days after its receipt.
- (3) The license issued to a foreign bank concerning its branch offices must be revoked by the National Bank if the foreign bank has lost the authority to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located.
- (4) A decision by the National Bank to revoke a license shall be communicated forthwith in writing to the bank and branch office, as well as the tax authorities and shall give the grounds for the decision.

**Article 11. Publication and effect of license revocation**

- (1) The decision to revoke a license shall be published within 7 days after it was adopted 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.
- (2) The decision to revoke a license shall become effective on the date of its approval.
- (3) Starting on the date that the revocation of a license takes effect, the bank shall be prohibited from engaging in any financial activity, and shall as soon as practicable thereafter liquidate its assets, terminate accepting deposits and discharge its liabilities. During the receivership the bank has to comply with the provisions of this Law, as before the license was revoked.

**Article 12. Prohibitions**

- (1) No one shall engage into financial activities, including acceptance of deposits or of equivalent of thereof without a license issued by the National Bank of Moldova.
- (2) No person other than a bank shall accept household deposits or their equivalent.
- (3) No one shall use the word “bank” or derivatives of the word “bank” in respect of a business, without a license issued by the National Bank, unless such usage is recognized by law or international agreement, or unless it shall be clear from the context in which this word and its derivatives are used that it does not concern financial activities.
- (4) No foreign bank shall be permitted to engage directly in any financial activity in the Republic of Moldova unless the activity is undertaken through a branch office or subsidiary for which a license has been issued by the National Bank. A foreign bank may open representation offices in the Republic of Moldova only after notifying the National Bank as in accordance with the normative acts of the National Bank of Moldova. Representation offices of foreign banks shall limit their activity to acts of information, connection or representation and shall not be engaged in any activity provided in Article 26.
- (5) No person shall make a misstatement of material fact or false representation or do anything to create a false appearance or engage in any manipulative device to practice in relation to taking of deposits.

CHAPTER III

ORGANIZATION AND ADMINISTRATION OF BANKS

**Article 13. Organizations and independence of banks**

- (1) Banks shall be organized as joint stock companies under the Joint Stock Company Law.
- (2) Each bank shall enjoy complete legal, operational, financial and administrative autonomy from any other person, including the National Bank, the Government and any other public

administration entities, unless the law specifically otherwise provides. No person shall limitate the banks' autonomy, influence any administrator of a bank in the discharge of his duties or to interfere in the activities of any bank, except in the execution of a specific authority or duty under the law.

- (3) Each bank shall enjoy freedom of contract, and the right to own and dispose of movable and immovable property, and to be a party to legal proceedings.
- (4) Banks may open branches and representation offices in the Republic of Moldova and other states only upon the preliminary approval of the National Bank, as provided in normative acts adopted by the National Bank.

#### **Article 14. Capital**

- (1) The minimum amount that banks must maintain as regulatory capital shall not be lower than the quantum of the minimum capital set out under Art. 5 (1).
- (2) Shares shall be paid integrally with funds.

#### **Article 15. Restrictions on ownership and holdings**

- (1) The transfer by transactions of an equity interest in a bank shall require the written authorization of the National Bank if, as a result of such transfer, any one person or number of persons acting in concert, would, directly or indirectly, hold a significant interest in such bank, as well as if, as a result of increase of such interest, the set limits of 25%, 33% and 50% shall be reached or exceeded. Determinations shall be based upon the criteria described in Article 7, paragraph (2). The voting right of shareholders holding significant interest in a bank without the authorization of the National Bank or of those that obtained equity interest that have lead to surpassing of maximum limits provided in paragraph (2), shall be reduced, as of the date of the National Bank notice, with the value of equity interest exceeding the limits allowed by the National Bank. Shareholders must obtain the authorization of the National Bank within three months or sell stocks held without such authorization. Upon the expiration of this term, if stocks were not sold or no authorization was received from the National Bank, the bank shall have to withdraw relevant stocks, to issue new stocks in same volume and category and to transfer gains from selling of such stocks to the initial holder after deduction of selling expenses.
- (2) The amount of all equity interests in a bank, owned directly or indirectly by resident persons of off-shore zones and / or countries, as well as / or by groups of persons acting in concert, within which there is a person from mentioned zones and / or countries, shall not exceed the significant interest.
- (3) No bank shall, alone or in concert with one or more other persons, without prior written authorization of the National Bank, directly or indirectly:
  - a) hold an equity interest in a legal entity that is engaged in other than financial activities that either represents a significant interest or exceeds as to its net current value the equivalent of 15 percent of the bank's regulatory capital;
  - b) or permit the aggregate net current value of all such equity interests to exceed the equivalent of 50 percent of the bank's regulatory capital.
- (4) No such authorization from the National Bank shall be required for equity interests except equity interest in capital of banks:
  - a) that have been acquired by a bank in lieu of repayment of credit granted by the bank, in which case the bank may entirely dispose of such equity interests within one year or within such longer time period as the National Bank in exceptional circumstances may decide;
  - b) held by a bank as an agent.

**Article 16. Reorganizations of banks**

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

**Article 17. Charter and by-laws**

- (1) Each bank shall have a charter that shall specify its corporate name and address, its purposes, Jurisdiction and authority of its Board of Directors, as well as the amount of its capital, the classes, numbers and nominal values of its shares, and the voting rights attaching to its shares. No amendment of the charter of a bank shall take effect without the prior written consent of the National Bank.
- (2) Each bank shall be governed by internal by-laws, approved by its Board of Directors, which in compliance with its charter shall establish:
  - a) the structural organization and functions of the bank, including administration and control units and their jurisdiction;
  - b) sub-units functions, supervisory positions employees;
  - c) the limits of the authority of the administrators and other employees of the bank to engage in financial activities in the name and for the account of the bank;
  - d) the functions of the Audit Committee and other permanent committees.
- (3) Each bank shall submit to the National Bank a duly certified copy of its registered charter, its by laws, and a list of the officials of the bank who are authorized to act on its behalf, together with their specimen signatures and a description of the limits of their authority.

**Article 18. Administrative and control structure of banks**

- (1) Each bank shall be managed by the general meeting of shareholders, the Board of Directors, the executive body and the Audit Committee. The Board of Directors is the administration authority of the bank that shall carry out supervision functions and shall establish and ensure the bank policy operation. Attributions of the Board of Directors shall be specified in the charter and internal regulations of the bank.
- (2) Each bank shall be overseen by an Audit Committee, as responsible for control of the bank's activity.

**Article 19. Board of Directors**

- (1) The Board of Directors of a bank shall have an uneven number of not less than three members. Board members shall be appointed by the general meeting of shareholders of the bank for a period of not more than four years. Board members may be reappointed for subsequent periods of four years. The general meeting of shareholders of a bank may establish remuneration for Board membership. The majority of Board members shall be persons not affiliated to the bank, except for affiliation determined by membership in bank Board.
- (2) A person shall not be eligible to become a member of the Board of Directors of a bank, or shall by decision of the general meeting of shareholders of the bank be relieved of his membership on the Board of Directors of the bank, in the event that:
  - a) he is or would be a member of the Board of Directors of two or more other banks of the Republic of Moldova;
  - b) he has been deprived of the right to sit on the Board of Directors;

- c) he serves, or he served during the preceding twelve months' period on the Administrative Council of the National Bank;
  - d) he has been subject to an insolvency proceeding and not discharged from payment of past debts.
- (3) The Board of Directors of a bank and its members cannot delegate their responsibilities to others.

#### **Article 20. Audit Committee**

- (1) The Audit Committee shall have an uneven number of not less than of three members appointed by the general meeting of shareholders of the bank for period of 4 years. Members of the board of Directors shall not concurrently serve on the Audit Committee. The majority of members of the Audit Committee shall not be persons employed at the bank.
- (2) The Audit Committee shall: a) establish appropriate accounting procedures and accounting controls for the bank, according to the National Bank regulations, supervise compliance with such procedures, and audit the bank's accounts and records; b) monitor compliance with the laws and regulations applicable to the bank and report to the Board of Directors thereon; c) deliver advise on any matters submitted to it by the Board of Directors or that it wishes to address.
- (3) The Audit Committee shall meet ordinary once per quarter and extraordinarily when convened by the Board of Directors or by two of its members. Decisions shall be taken by a majority of the members that have no right to abstain

#### **Article 21. Requirements to administrators**

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

#### **Article 22. Commercial secrecy, banking secrecy and fiduciary obligations**

- (1) Present and past administrators, employees and agents of a bank shall be required to keep commercial secret and banking secret, and not to use for personal gain or gain by other than the bank that they serve or have served, or permit to be examined by others, any information that they obtained in the course of their services to the bank.
- (2) This type of information may be disclosed only to the National Bank, its inspectors, accounting experts and external auditors appointed by it, judicial and investigatory authorities, Accounting Chamber, the Centre for Economic Crime and Corruption Prevention, relevant fiscal authorities as the law shall provide, and when the protection of the bank's own interest in legal proceedings requires disclosure. Banks are obliged to present to the investigatory authorities the materials concerning non-performing and compromised loans, determined by them in conformity with the norms of the National Bank, for undertaking measures in conformity with currently effective legislation. Commercial banks are also obliged to submit documents confirming the opening of accounts to the tax payers, within 5 days from the opening of such banking accounts.
- (3) Banks shall introduce suitable procedures so that their administrators and employees are not placed in a situation where their duty to one customer conflicts with their duty to another, or their own duty conflicts with their duty to a customer.

### **Article 23. Money Laundering**

- (1) No financial institution shall conceal, convert, or transfer cash or other valuables, knowing that it is derived from criminal activity, for the purpose of concealing its illicit origin or of assisting any person who is involved in such activity to evade the legal consequences of his action.
- (2) It is considered that the financial institution is knowledgeable of the illicit origin of the cash or other valuables if it is inferred from objective factual circumstances.
- (3) Financial institutions shall inform the competent authorities of the evidence that cash or other valuables are derived from criminal activity, as prescribed by the law, providing such information is not considered a violation of Article 22.

### **Article 24. Conflicts of interest**

- (1) An administrator of a bank who is a party to a material contract or a proposed material contract with the bank or is an administrator of, or has a material interest in or a material relation to any person who is a party to a material contract or a proposed material contract with the bank, shall disclose in writing to the bank about its material interest when the contract comes or ought to come to the attention of the administrator.
- (2) Any administrator shall submit to the Board of Directors not less than annually a notice in writing that shall be a sufficient declaration of conflict of interest. Sufficient declaration of conflict of interest means providing the names and addresses of the administrator's associates, full particulars of activity or family interest that such person has, and stating that the person is to be regarded as interested in any material contract with a person named in the notice.
- (3) An administrator who has a material interest to a contract shall leave any meeting at which the contract is discussed. At the same time his presence at the meeting is considered for purposes of constituting a quorum and when voting as refrained. The chairman of the meeting has the decisive vote if there is parity.
- (4) For the purposes of paragraphs 1 and 2 an interest shall be material if it is material with reference to the wealth, business or family (first and second degree of consanguinity) interests of the person having the interest. A person has a material interest in any company if the person owns, directly or indirectly, a significant interest in the company, or is an administrator of the company and any partnership if the person is a partner.
- (5) Where an administrator fails to disclose a material conflict of interest:
  - a) a court may, on the application of the bank, one or more shareholders, or the National Bank set aside the contract on such terms as it thinks fit;
  - b) the National Bank may, by written order, suspend the administrator from office for any period not exceeding one year, or remove the administrator from office permanently.
- (6) Independently of the fiduciary obligation under Article 22 (3), administrators of banks have a fiduciary duty to the bank that they serve and to the bank's customers to place the bank's interests and its customers' interests before their own pecuniary interest.

## **CHAPTER IV**

### **OPERATIONS**

#### **Article 25. Prudential requirements**

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

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

**Article 26. Financial activities allowed to banks**

- (1) Banks may conduct the following activities within the issued authorization:
  - a) receiving deposits (in the form of demand or time deposits etc.) bearing interest or not;
  - b) extending credit (consumer and mortgage credit, factoring, with or without recourse, financing of commercial transactions, issue of warranties and collateral etc.);
  - c) borrowing funds, buying and selling for their own account or for account of customers (excluding underwriting) of:
    - money market instruments (checks, bills of exchange and certificate of deposit etc.);
    - futures and options relating to debt securities or interest rates;
    - interest rate instruments;
    - debt securities;
  - d) providing payment and collection services;
  - e) issuing and administering means of payment (payment cards, travelers' checks and bankers' drafts etc.);
  - f) money (including foreign currency) broking;
  - g) financial leasing;
  - h) providing credit reference services;
  - i) providing services as a financial agent or consultant not including services described in subparagraphs (a) and (b);
  - j) dealing in foreign currencies, including contracts for the future sale of foreign currencies;
  - k) providing trust services (investment and administration of funds received in trust), safekeeping and administration of securities and other valuables etc.;
  - l) providing services as an investment portfolio manager or investment adviser;
  - m) underwriting and distribution of debt and equity securities and dealing in equity securities;
  - n) such other financial activities as approved by the National Bank.
- (2) No bank shall engage in financial activities that exceed those specifically authorized by its license.

**Article 27. Prohibited anticompetitive transactions and practices**

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

- (2) No financial institution shall require any person to contract to receive any financial service or any goods or other service from an affiliate as a condition of being permitted to contract with the financial institution to receive any financial service.
- (3) No bank and no financial institution affiliate of a bank shall:
  - a) extend credit beyond limits determined by the National Bank to a person or underwrite or place tangible assets or arrange financing from third parties to that person to enable the person to repay his obligation to the affiliate;
  - b) underwrite or place tangible assets of a person and extend credit to that person to enable him to pay the principal, interest or dividend on such securities;
  - c) underwrite, place, or distribute securities and within 60 days of the initial sale, purchase or recommend the purchase of such securities in the capacity of asset manager or investment advisor.
- (4) No bank shall purchase from an affiliate of the bank:
  - a) assets of that affiliate;
  - b) securities to be underwritten, placed or distributed by that affiliate or that have been sounder written, placed or distributed within the past year.
- (5) No bank shall provide credit enhancement for or extend credit to facilitate the purchase of securities underwritten, placed or distributed by an affiliate of the bank.

**Article 28. Prudential measures**

- (1) Banks shall observe the following maximum limits as prescribed by the National Bank:
  - a) the maximum ratios and exposures to be maintained by a bank concerning its assets, risk weighted assets, and off-balance sheet items and various categories of capital and reserves;
  - b) the maximum aggregate amount of credits, expressed as a percentage of its regulatory capital, that a bank shall be permitted to extend to any single person or group of interrelated persons;
  - c) the maximum aggregate amount of credits, expressed as a percentage of the aggregate amount of all its credits, that a bank shall be permitted to have committed or outstanding to or for the benefit of the ten largest borrowers (including groups of interrelated persons).
- (2) According to the regulations of the National Bank, banks shall observe the following requirements concerning:
  - a) the minimum amount of liquid resources or specific categories of such resources in relation to the value or change in value of assets (including guarantees and collateral received) or specific categories thereof, or in relation to the amount or change in amount of liabilities or specific categories of liabilities;
  - b) the maximum aggregate amount of real estate investments, or specific categories thereof;
  - c) classification and evaluation of assets and specific risk provisions to be made on the basis of such classification and evaluation against losses on loans and the time when earnings on such loans may no longer be accounted for as income except as received in cash;
  - d) the types or forms of credits and investments made;
  - e) matching as to maturity and interest in respect of assets and liabilities;

- f) unhedged positions in foreign currencies, precious metals or precious stones, exceeding a specified size.
- (3) Non compliance with the requirements described in paragraphs (1) and (2) will result into use of the provisions of Article 38.
- (4) A bank shall make no capital distribution if in the opinion of the National Bank, after making the distribution, the bank would have less than the minimum regulatory capital.
- (5) A bank shall not extend credits under the warranty of own issued stocks.
- (6) No financial institution may engage directly in enterprise activity, or services other than financial services.

#### **Article 29. Records of financial institutions**

A financial institution shall prepare and maintain at its head office the following records:

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

#### **Article 30. Public notification**

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

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

- (1) Banks shall not extend credit to or for the benefit of a person who is related to the bank, if such credit would be extended on less favorable terms and conditions, or not at all, to the persons who are not so related to the bank. For the purposes of this paragraph, persons who are related to a bank shall include: any administrator of the bank; any person who is related to such administrator by marriage or consanguinity of the second degree; shareholders having substantial interest; affiliated persons. Notwithstanding the foregoing, no bank shall extend credit to or for the benefit of a person so related to the bank if as a result thereof the aggregate amount of the credits extended by the bank to such persons would exceed an amount prescribed by regulation by the National Bank.
- (2) Credit extended by any bank to any related financial institution shall be subject to such conditions or restrictions as prescribed by the National Bank. For the purposes of this paragraph, a related financial institution shall include: any person or number of group of such persons acting in concert, that has a direct or indirect interest in the bank extending the credit; any entity in which the bank holds a significant interest.
- (3) A bank shall not extend credit to any of its employees in excess of the limits established by the National Bank.

**Article 32. Provision of credits**

- (1) The banks shall record all credit and warranty operations of the banks in contractual documents that will clearly define the established terms and conditions of relevant transactions.
- (2) Banks shall extend credits only if assured that the applicants are solvable enough as to reimburse credits in due time. For the purpose of this paragraph, banks shall request the applicants to guarantee credits under conditions established by bank credit regulations.

CHAPTER V

ACCOUNTS AND STATEMENTS, AUDIT, REPORTING AND INSPECTION

**Article 33. Accounts and financial statements**

- (1) Financial institutions shall maintain at all times accounts and records and prepare periodic financial statements to reflect their operations and financial condition in accordance with consistently maintained sound accounting practices.
- (2) Accounts and financial statements shall be in accordance with accounting standards as established by the National Bank respecting the preparation of the financial institution's accounts, including creation of appropriate provisions for bad and doubtful assets and timing of income receipts.
- (3) The accounts, records and financial institution's statements shall also reflect the operations and financial condition of its subsidiaries and branch offices, both on an individual and on a consolidated basis.

**Article 34. External audit**

- (1) Banks shall each appoint an independent external auditor, accepted by the National Bank, who shall:
  - a) assist it in maintaining proper accounts and records in the manner established by the National Bank;
  - b) prepare an annual report together with an opinion as to whether the financial statements present a full and fair view of the financial condition in accordance with the provisions of this Law;
  - c) review the adequacy of internal audit and control practices and procedures and make recommendations for redemption;
  - d) inform the National Bank about any fraudulent act by an employee of the bank or its branch office and any irregularity or deficiency in its administration or operations that should be expected to result in a material loss for the bank or its branch office.
- (2) For banks whose assets do not exceed the amount established by the National Bank, the audit functions may be performed by an accounting expert or a certified public accountant from the bank, as determined by the National Bank.

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

Each bank shall, within four months of the end of its financial year, publish in the newspapers of general circulation, wherever the offices of the bank concerned are located, its balance sheet and external auditor's opinion, and publish its annual report and provide copies to the public without charge.

**Article 36. Examinations of branches**

- (1) Provisions of Articles 34 and 35 may, by regulations of the National Bank, be made applicable to any branch office of a bank as if such branch office were a subsidiary of that

bank. Statutory and regulatory provisions requiring financial statements may be applicable for the branch office too.

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

#### **Article 37. Reports and inspection**

- (1) Each bank shall prepare and submit to the National Bank according to its regulations, reports concerning its administration and operations, liquidity, solvency, and profitability, and those of its subsidiaries, for an assessment of the financial condition of the bank and each of its subsidiaries on an individual and a consolidated basis.
- (2) Every bank and each of its branches and subsidiaries, including those abroad, shall be subject to inspections by inspectors of the National Bank or by auditors appointed by the National Bank. The inspection of the bank that is a branch or subsidiary of a foreign bank or has a significant interest in the foreign bank is made by the auditors charged with supervision of financial activities in that country.
- (3) Each bank and each of its subsidiaries shall admit and cooperate fully with the inspectors of the National Bank and the auditors appointed by the National Bank.
- (4) In their inspections of banks and their subsidiaries, the National Bank inspectors and its auditors may:
  - a) examine the accounts, books and other records;
  - b) require administrators, employees and agents of the bank or subsidiary to provide all such information on any matter relating to its administration and operations.
- (5) Fiscal authorities, the Centre for Economic Crime and Corruption Prevention and other authorities authorized with control functions, shall be admitted by financial institutions and shall conduct such controls and obtain information and records or copies of thereof deemed for application of vested powers as it is established within their competence and provided in the legislation on the activity of these authorities.

### CHAPTER VI

#### INFRACTIONS, PENALTIES AND REMEDIAL MEASURES

#### **Article 38. Infractions, penalties and remedial measures**

- (1) The National Bank may take the following actions with respect to a bank (financial institutions) if it determines that the bank (financial institution) or any of its owners or administrators are guilty of an infraction consisting of: a violation of this Law or regulations of the National Bank, condition attached to the license; the breach of a fiduciary duty; the unsafe or unsound operations; the failure to report; late reporting; reporting of erroneous data on banking prudential indicators or other requirements provided in the normative acts of the National Bank; failure to comply with remedial measures established by the National Bank or if considering the specific current or previous financial situation of the bank (financial institution):
  - a) issue written warning;
  - b) conclude an agreement with the bank (financial institutions) providing for remedial actions; c) issue written instruction to cease and desist from such infractions, to undertake remedial actions and impose sanctions;
  - c) impose fines to the bank (financial institutions) up to 0.5% of the capital of the bank (financial institution) and / or to the administrator within 1 to 10 average salaries on financial activities according to data of the National Bureau of Statistics for the month preceding the date of infraction;

- d) withdraw the confirmation issued to the administrator of the bank (financial institution);
  - e) limit or desist the activity of the bank (financial institution);
  - g) withdraw the licence or authorization.
- (2) The National Bank may require the following if it determines that the bank (financial institution) committed infractions mentioned in paragraph (1):
- a) that the average total assets of the institution during each quarter not exceed its average total assets during the preceding quarter;
  - b) that the institution not acquire any equity interest in any legal entity, establish or acquire any additional branch office, or engage in any new line of business;
  - c) that the institution not grant any extension of credit to an affiliate unless such credit is collateralized by Government issued or guaranteed tangible assets, whose market value exceeds at all times 125% of the amount of the credit;
  - d) that the interest rate the institutions pay on deposits not exceed the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located;
  - e) that the institution alter, modify or terminate any activity that the National Bank determines possess excessive risk;
  - f) that the institution substitute one or more administrators who had held office for more than 180 days immediately before the bank (financial institution) became undercapitalized or restrict their competences;
  - g) to divest itself of or to liquidate any subsidiary if the National Bank determines that the subsidiary is becoming insolvent and poses a significant risk to the financial risk or is likely to cause significant dissipation of the institution's assets or earnings;
  - h) that no employee receives any payments (bonuses and other additional payment to the basic salary), retributions (compensations) or salaries exceeding the amount of average salaries (excluding bonuses, retributions and stock options and profit sharing) during the twelve calendar months preceding the month in which the institution became undercapitalized.
- (3) For financial institutions in insolvency or over-indebted situation, or whose capital is determined to be less than two-thirds of the regulatory capital and that are likely to face insolvency situation, in addition to measures and sanctions described in paragraphs (1) and (2), the National Bank shall withdraw the license and shall contact the law authorities to initiate the insolvency process. For the purpose of this paragraph, "insolvency" means the situation when the bank fails to pay in due time 10% of current commitments.
- (4) The measures and penalties provided in this article shall not preclude application of other measures and penalties as provided by the legislation.
- (5) The measures and penalties applied by the National Bank in accordance with this article shall be paid to the State budget.
- (6) By derogation from legislative provisions on administrative contentious matter, only the shareholders of the banks that in total hold at least 25% of voting shares, depositors that hold at least one-fourth of total deposits or other creditors that hold at least one-fourth of total credits (except deposits) may address the competent court within 30 days from license revocation to appeal the decision of the National Bank to revoke the license indicating the reasons within provisions of paragraph (3).

- (7) The measures and penalties applied by the National Bank of Moldova may be appealed by a competent court. Where a suit is instituted against the National Bank of Moldova with regard to application of provisions of this Law, it shall be presumed that:
- a) if the court determines that the actions applied by the National Bank towards the bank are not motivated, the National Bank shall pay all material claims and the revocation of license shall remain valid;
  - b) the suit shall not have impact upon the liquidation process and shall not determine the suspension of actions applied by the National Bank.

## CHAPTER VII

### FINAL AND TRANSITIONAL PROVISIONS

#### **Article 39. Transitional provisions**

- (1) Financial institutions that operate as banks at the time that this Law becomes effective shall be deemed to possess a license pursuant to the provisions of this Law.
- (2) Applications for bank licenses that are pending on the effective date of this Law shall be returned to the applicants. The applicant will resubmit new applications in accordance with the provisions of this Law.
- (3) Within the time period specified by the National Bank, or by regulation or order, all financial institution's financial condition and all operations which do not conform to the requirements of this Law and any regulations issued by the National Bank, shall conform to the requirements of this Law no later than July 1, 1996.

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

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

#### **Article 41. Regulations of the National Bank**

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

#### **Article 42. Dispute settlement**

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

#### **Article 43. Final dispositions**

- (1) This Law shall take effect on the date of its publication.
- (2) Notwithstanding the provisions of Article 39 (3), the provisions of paragraphs 3 and 4 of Article 38 shall not become mandatory before January 1, 1996.
- (3) The regulations issued by the Government shall be within one month put into accordance with the provisions of this Law.
- (4) From the date this law takes effect the following are abrogated:
  - The law No 601-XII dated June 12, 1991, on Banks and Banking Activity;
  - Parliament decree No 602-XII dated June 12, 1991, on the implementation of the law on Banks and Banking Activity;

- The law No 810-XII dated December 18, 1991, on completion of the law on Banks and Banking Activity;
  - Parliament decree No 811-XII dated December 18, 1991, on implementation of the law on completion of the Law on Banks and Banking Activity;
  - The law No 1233-XII dated December 15, 1992, for the modification and completion of the law on Banks and Banking Activity;
  - The law No 166-XIII dated July 1, 1994 for the modification and completion of the law on Banks and Banking Activity;
  - Parliament decree No 167-XIII dated July 1, 1994, on the implementation of the law for the modification and completion of the law on Banks and Banking Activity;
  - The law No 419-XIII dated March 29, 1995, on completion of the Article 22 from the law on Banks and Banking Activity.
- (5) It is suggested to the President of the Republic of Moldova to abrogate the Decree No 36-p dated April 25, 1995, on promulgation of the law for the completion of the Article 22 from the law on Banks and Banking Activity. [Art. 43 amended by Law No. 249 - XVI of 21.10.2005].

CHAIRMAN OF THE PARLIAMENT

PETRU LUCINSCHI

Chisinau, July 21, 1995 No 550-XIII