



# **LAW OF UKRAINE**

## **On Banks and Banking**

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# LAW OF UKRAINE

## On Banks and Banking

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A certain provision of Article 79 part one of this Law has been acknowledged to be in violation of the Constitution of Ukraine (to be unconstitutional) (pursuant to Decision of the Constitutional Court of Ukraine No. 6-p(II)/2020 dated 26 June 2020).

## **Section I. GENERAL PROVISIONS**

### **Chapter 1. GENERAL PROVISIONS**

#### **Article 1. Subject and Purpose of the Law**

This Law defines the structure of the banking system and sets economic, organizational and legal framework for establishment, operation, restructuring and resolution of banks.

The purpose of this Law is to provide legal support for protection of legitimate interests of bank depositors and clients, sustainable development and stability of the banking system, and creating favorable conditions for the development of the economy of Ukraine and adequate competitive environment in the financial market.

#### **Article 2. Definitions**

The terms used in this Law shall have the following meaning:

**Associated Person** shall mean the husband or wife, lineal relatives of a person (father, mother, children, siblings, grandfather, grandmother, grandchildren), lineal relatives of this person's husband or wife, the husband or wife of a lineal relative.

**Affiliate of Bank** shall mean any legal entity in which the bank holds qualifying holding or which holds a qualifying share in the bank.

**Bank** shall mean a legal entity, which has an exclusive right, under the NBU license, to render the banking services.

**Bank with Foreign Capital** shall mean a bank where the share of capital, owned by at least one foreign investor is not less than 10 percent.

**Banking Group** shall mean a group of legal entities:

having common controller comprising a parent bank, its one or more Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions, or for which financial services is a predominant activity, or



comprising a parent bank that is a controller of its Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions, or for which financial services is a predominant activity, or

having common controller comprising two or more Ukrainian financial institutions, and/or companies for which financial services is a predominant activity, their Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions or for which financial services is a predominant activity, where banking prevails, or

comprising a nonbank financial institution or a company for which financial services is a predominant activity, which is a controller of its two or more Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions or for which financial services is a predominant activity, where banking prevails.

The bank holding company and the company that renders supporting services that has a common controller with the banking group participants shall be a part of the banking group.

Banking shall be deemed the prevailing activity of a group, if the cumulative arithmetic average of assets of the banking group member banks for the last four reporting quarters equals to or exceeds 50% of the cumulative value of the arithmetic average of assets of all financial institutions belonging to the group for the mentioned period. Calculation to determine the predominant activity of a group shall be carried out every year as of 1 January.

Should, after the group is determined as the banking one on the basis of its predominant activity, the share of cumulative assets of the banks (bank) within the cumulative assets of the member financial institutions decrease and come to 40-50 percent, the group shall still be deemed the banking group during three years from the moment of such a decrease.

**Banking Activity** shall mean taking deposits from individuals and legal entities and investment of these funds on the bank's own behalf, on its terms, and at its own risk, opening and servicing accounts of individuals and legal entities.

**Bank Credit** shall mean any commitment of a bank to extend a certain amount of money, any guarantee, any obligation to acquire the right to claim debt, or any extension of the debt maturity, which occurs in exchange for the borrower's commitment to repay the debt amount, as well as an obligation to pay interest and other charges due on this amount.

**Banking License** shall mean a record in the State Register of Banks on the right of a legal entity or foreign bank's branch to carry out banking activity.

**Banking Payment Instrument** shall mean an instrument containing the details identifying its issuer, the payment system, in which it is used and, as a rule, its holder. Relevant documents are formed with the help of banking payment instruments for the transactions performed using the banking payment instruments, on the basis whereof funds are transferred or other services rendered to the holders of such instruments.

**Bank Accounts** shall mean the accounts that show bank's own funds, claims, commitments of a bank to its clients and counterparties, and enable transfer of the funds by using the banking payment instruments.

**Bank Holding Company** shall mean a financial holding company, where banking is the predominant activity of the financial institutions being its subsidiary or associate companies.

**Banking License Issuance** shall mean incorporation by the NBU into the State Register of Banks of a record on the right of a legal entity or foreign bank's branch to carry out banking activity.

**Banking License Revocation** shall mean removal by the NBU from the State Register of Banks of the record on the right of a legal entity or foreign bank's branch to carry out banking activity.

**State Register of Banks** shall mean the register maintained by the NBU, which contains information set by the NBU about banks, their standalone units, affiliates, and representatives of foreign banks in Ukraine.

**Subsidiary** shall mean a legal entity, controlled by another legal entity (parent company).

**Deposit** shall mean the funds in cash or noncash form in hryvnia or a foreign currency which are placed by the clients into their personal accounts with a bank according to an agreement with the bank for a specified period of time or without specification of such a period of time, and which are subject to repayment to the depositor under the laws and regulations of Ukraine and terms and conditions of the agreement.

**Business Reputation** shall mean the information collected by the NBU regarding compliance of an entity or individual's activities, including those of the managers of the entities or holders of the qualifying shares therein, with the requirements of law, business practice and professional ethics, as well as the data on integrity, professional and managerial skills of the individual.

**Economic Ratios** shall mean the indicators set by the NBU and mandatory for all banks.

**Foreign** shall refer to a citizen or a legal entity of any country other than Ukraine.

**Bank Inspection** shall mean a form of on-site banking supervision performed by the persons authorized by the NBU at the bank's premises.

**Qualifying Holding** shall mean direct and/or indirect, independent or joint holding of 10 or more percent of the authorized capital or the voting rights granted by purchased shares (stakes) of a legal entity or the ability to exert significant influence on the management or activities of the legal entity irrespective of the formal ownership. An entity is deemed the owner of an indirect qualifying holding regardless of whether the entity in question controls the direct owner of the holding in the legal entity or controls any other person in the chain of corporate rights ownership of the legal entity.

**Equity** shall mean own funds, i.e. the residual value of the bank assets after deduction of all its liabilities.

**Assigned Capital** shall mean an amount of money in a freely convertible currency granted by a foreign bank to its branch for accreditation thereof.

**Authorized Capital** shall mean paid-in money contributions of bank participants in the value of shares (stakes) of the bank in an amount determined by the charter of the bank.

**Regulatory Capital** shall mean an aggregate of the core and additional capital whose components are defined by this Law and NBU regulations.

**Managers of Legal Entity** (other than a bank) shall mean managers of an enterprise or institution, chief executives or members of the executive body of a legal entity, and members of (supervisory) board of a legal entity.

**Client of Bank** shall mean any individual or legal entity that uses services of a bank.

**Key Participant in a Legal Entity**, including a key participant in the ownership structure of a bank (hereinafter referred to as the “key participant of a legal entity/key participant in the ownership structure of a bank”) shall mean any individual who owns a share in the authorized capital (shares of stock) of this legal entity, a legal entity that owns a share (a stake) of two or more percent of the authorized capital of this legal entity and at the same time:

- 1) if there are more than 20 individuals participating in a legal entity, 20 of them with the largest shares shall be considered as key participants
- 2) if more than 20 individuals own the equal shares (stakes) in the authorized capital of a legal entity, all the individuals owning shares (stakes) in the amount of two and more percent of the authorized capital of this legal entity shall be considered as key participants
- 3) it is deemed that a listed company has no key participants.

**Leverage Ratio** shall mean the ratio of the Tier 1 capital to total assets and off-balance-sheet liabilities.

**Collective Suitability** – when members of the bank’s supervisory board and bank’s board possess common/cumulative knowledge, skills, professional and managerial experience sufficient (adequate) for understanding all the aspects of the bank’s business, adequate assessment of risks the bank may be exposed to, sound decision making, effective management and control over the bank’s activity in general taking into consideration the bank’s functions pursuant to the laws, the bank’s articles of association and internal regulations.

**Combined Capital Buffer** shall comprise the conservation buffer, the countercyclical capital buffer, the systemic importance buffer, and the systemic risk buffer.

**Company for which Provision of Financial Services is a Predominant Activity** shall mean a legal entity where a share of income from sale of financial services, based on results of the previous reporting period, constitutes 50 or more percent of the total net income (proceeds) from sale of products (goods, works, services).

**Controller** shall mean an individual or legal entity that has no individuals controlling his/her/its activities and is able to exert decisive influence on the management or activities of a legal entity through direct and/or indirect, independent or joint holding of a share in the legal entity corresponding to an equivalent of 50 or more percent of the authorized capital and/or voting rights of the legal entity or, irrespective of the formal ownership, able to exert such influence on the basis of an agreement or in any other way.

**Control** shall mean the possibility of exerting decisive influence on the management and/or activity of a legal entity by virtue of direct and/or indirect possession by one person independently or jointly with other persons of a share in the legal entity amounting to an equivalent of 50 or more percent of the authorized capital and/or voting rights of the legal entity, or irrespective of the formal ownership, the possibility to exercise such influence on the basis of an agreement or in any other way.

**Conflict of Interest** shall mean existing and potential contradictions between personal interests and professional or official duties of a person that may affect the exercise of his/her powers, objectivity and impartiality of his/her decisions.

**Funds** shall mean the money in the national or a foreign currency or its equivalent.

**Credit Register** of the National Bank of Ukraine (hereinafter - the CR) shall mean an information system providing for collection, accumulation, storage, altering, use and dissemination (disclosure) of information about banks' lending transactions, the status of fulfilment of obligations under these transactions, and loans analysis and classification.

**Bank's Creditor** shall mean a legal entity or an individual who has a written confirmation of a claim to the bank with regard to latter's property obligations.

**Equity Right Ownership Chain of Legal Entity** shall mean information on the composition of key participants of a legal entity, that includes information on key participants of the first and any subsequent level of equity right ownership of a legal entity.

**Liquidation of Bank** shall mean a procedure for terminating the functioning of a bank as a legal entity pursuant to the provisions of the present Law and the Law of Ukraine *On Household Deposit Guarantee System*.

**Parent Bank** shall mean a Ukrainian bank that is not a subsidiary of other Ukrainian bank or bank holding company, and among subsidiaries and/or associated companies there is a bank and/or other financial institution and/or company for which provision of financial services is a predominant activity.

**Capital Adequacy Ratio** shall mean the ratio of the bank's regulatory capital to total assets and off-balance liabilities weighted by the respective credit risk coefficients and an amount of the claims necessary to cover other risks of the bank.

**NBU Regulations** shall mean the regulations issued by the National Bank of Ukraine (NBU) within its authority and in pursuance of this and other laws of Ukraine.

**Professional Judgment** is the NBU's justified, impartial and reasonable opinion and/or evaluation of facts, events, conditions and persons, based on the NBU officials' knowledge and experience and comprehensive and exhaustive analysis of information and documents submitted to the NBU in terms of prescribed legal procedures and obtained by the NBU, including in the course of banking regulation and supervision, as well as on information from official sources.

**Bank Risk Profile** shall mean an assessment result of a bank's level of risk as of a certain date before any risk mitigation measures have been applied, as well as taking into account such measures with a breakdown to each type of risk and in the aggregate.

**Public Company** shall mean a legal entity established in the form of a public joint stock company that meet the criteria set by the NBU.

**Reorganization of a Bank** shall mean merger, takeover, spinoff or break-up of a bank, change of its organizational and legal form (transformation) resulting in the transfer of its property, funds, rights and liabilities to legal successors, assumption of property by a legal successor.

**Level of Equity Right Ownership of Legal Entity** shall mean relations of equity right ownership of a legal entity between such legal entity and its participants. If all the participants of the legal entity are individuals, such legal entity shall have only one level of equity right ownership.

**Disclosed Provisions** shall mean the reserves and funds formed or increased at the cost of the retained earnings and published in the bank's financial reporting.

**Banking Settlement Operations** shall mean movement of funds on bank accounts which is performed pursuant to client instructions or as a result of the actions, which have led to the legal transfer of assets ownership rights.

**Congenerous Party** shall mean a legal entity the holders of qualifying holding wherein are at the same time the holders of qualifying holding in a bank.

**Systemically Important Bank (SIB)** shall mean a bank that corresponds to the criteria set by the NBU and whose activity impacts the stability of the banking system.

**Ownership Structure of Legal Entity** shall mean a system of mutual relations of legal entities and individuals which enables to identify:

- 1) all key participants (including public companies) and controllers of the legal entity
- 2) all key participants of each legal entity in the equity right ownership chain of such legal entity
- 3) all the persons having direct and/or indirect qualifying holding in the legal entity
- 4) control relations regarding the legal entity among all the entities and persons defined in paragraphs 1 – 3 of this definition.

**Bank's Authorized Person** shall mean a person, who, on the basis of the charter or an agreement, is empowered to represent a bank and take certain actions of legal nature on behalf of the latter.

**Participants in Bank** shall mean bank founders, shareholders of a bank and stakeholders in a cooperative bank.

**Banking Group Participants** shall mean the banks, other financial institutions, and companies whose predominant activity is the provision of financial services, bank holding companies, companies that render supporting services, which have a common controller.

**Participant of Legal Entity** shall mean a person that owns equity rights of this legal entity.

**Financial Rehabilitation of a Bank** shall mean recovery of bank's solvency and suiting the financial indicators of its activity to the requirements of the NBU.

The terms “associate company”, “parent company”, “financial holding group”, “company that renders supporting services”, “financial services consumer”, “financial services”, and “financial institution” shall have the meaning as specified in [the Law of Ukraine On Financial Services and State Regulation of the Financial Services Markets](#).

The term “underwriting” shall have the meaning as per the Law of Ukraine *On Capital Markets and Regulated Commodity Markets*.

### **Article 3. Application (Scope) of the Law**

This Law shall govern relations that arise in the course of establishment, registration, operation, reorganization and liquidation of banks.

The provisions of the present Law and NBU regulations shall be applicable to both banks and foreign bank branches.

Provisions of the present Law shall be applicable to the representative offices of foreign banks operating in the territory of Ukraine, unless otherwise established by the effective international treaties (agreements) ratified by the Verkhovna Rada of Ukraine, as well as to branches of Ukrainian banks abroad and to the bank's related parties specified in Article 52 of the present Law.

Appropriate provisions of the present Law shall also be applicable to some liabilities and responsibilities of other persons, whose activity is connected with operation of banks.

The relations that arise as a result of application of the provisional administration and liquidation of an issuer of the mortgage-backed securities shall be regulated by the present Law if that is not contrary to the Law of Ukraine *On Mortgage-Backed Securities*.

#### **Article 4. Banking System of Ukraine**

The banking system of Ukraine consists of the National Bank of Ukraine (NBU) and other banks, as well as the branches of foreign banks, which have been established and operate in the territory of Ukraine in compliance with the present Law provisions and those of other laws of Ukraine.

Each bank may independently determine areas of its activity and specialization by types of operations and services.

The NBU may determine types of the specialized banks and a procedure of obtainment of the specialized bank status by a bank.

The NBU shall regulate activities of the specialized banks through the economic ratios and regulations that support the operations performed by these banks.

The NBU uses the following criteria to define SIBs: size of a bank, financial interconnectedness and lines of activity.

The NBU shall exercise its regulatory and supervisory activities pursuant to the provisions of the Constitution of Ukraine, the present Law, the Law of Ukraine *On the National Bank of Ukraine*, other legislative acts and its own regulations. The NBU sets the peculiarities of regulations and supervision of SIBs taking into account the specifics of their activities.

#### **Article 5. Economic Independence of Banks**

Banks shall have the right to independently hold, use and manage the property they own.

The State shall not be held responsible for commitments of the banks, and banks shall not be held responsible for commitments of the State, unless otherwise provided for by law or an agreement.

The NBU shall not be held responsible for commitments of the banks, and banks shall not be held responsible for commitments of the NBU, unless otherwise provided by law or an agreement.

Public authorities and local government bodies shall not be allowed to influence in any way the management or employees of banks during the exercise of official duties by them, or to interfere with the bank activities, except when expressly specified by law.

The damage inflicted on a bank as a result of such interference shall be subject to compensation pursuant to the procedures specified by law.

## **Article 6. Organizational and Legal Form of the Bank**

In Ukraine, banks shall be created in the form of a joint stock company or a cooperative bank.

The legal status, establishment procedures, activities, reorganization and liquidation of banks shall be determined by the present Law and the Law of Ukraine *On Households Deposit Guarantee System*.

Laws and regulations on joint stock companies apply to the banks taking into account the provisions hereof. In case of any conflict between the provisions of this Law and the laws and regulations on joint stock companies, the provisions of this Law shall prevail.

In the event of contradiction of this Law to other laws (including codes) this Law shall prevail.

## **Article 7. State-Owned Banks**

A state-owned bank (SOB) is a bank in which the State owns 100% of the authorized capital. A SOB can exist solely in the form of a joint stock company.

Provisions of this Law apply to SOBs, taking into account particularities introduced by this Article. Provisions of other laws of Ukraine apply to SOBs to the extent they do not contradict this Article.

The State is the only shareholder of a SOB. The Cabinet of Ministers of Ukraine shall exercise management of equity rights of the State in the SOB. The body exercising management of equity rights of the State in the SOB shall also perform the functions of the highest management body of the SOB (hereinafter - the highest body).

The supervisory board and board shall be the other management bodies of the SOB.

Decisions of the highest body shall be documented through acts of the Cabinet of Ministers of Ukraine whose drafts shall be developed and submitted to the Cabinet of Ministers of Ukraine by the central executive authority assigned to shape the state financial policy, and they are not subject to approval by other stakeholder agencies.

The SOB's charter shall be approved by the highest body and meet the requirements of Ukrainian laws, taking into account specifics stipulated by this Law and NBU regulations.

The highest body shall have the exclusive authority to take decisions on the following matters:

- 1) determination of the SOB's core (strategic) activities and approval of reports on the implementation thereof
- 2) approval of the SOB's strategy approved by the supervisory board
- 3) introduction of amendments to the SOB's charter
- 4) increase or decrease in the SOB's authorized capital
- 5) appointment and termination of powers of the members of the supervisory board as prescribed in this Article

- 6) approval of terms of civil law contracts to be concluded with the members of the supervisory board, choosing a person authorized to sign civil law contracts with the members of the supervisory board
- 7) setting the amount of remuneration for the members of the supervisory board, including fringe benefits
- 8) approval of the regulation on the remuneration for the members of the supervisory board, requirements to which shall be imposed by the NBU
- 9) approval of the report on the remuneration for the members of the supervisory board, requirements to which shall be imposed by the NBU
- 10) approval of the SOB's annual report
- 11) approval of follow-up measures based on the report of the supervisory board, including with respect to implementing the SOB development strategy (the SOB strategy)
- 12) cover of losses and distribution of profit
- 13) approval of annual dividends amount
- 14) approval of the Regulation on the SOB's supervisory board
- 15) change in the type of a joint stock company as a legal form of the SOB
- 16) issuance of shares, split or consolidation of shares
- 17) repurchase of shares of own issue by the SOB
- 18) cancellation or sales of the SOB's repurchased shares
- 19) SOB reorganization, setting up the commission on SOB reorganization
- 20) winding up the SOB, setting up the commission on dissolution (the liquidation commission, liquidator) of the SOB, approval of the liquidation balance sheet
- 21) setting criteria to select an external auditor for the SOB
- 22) giving consent to a sizable transaction upon the submission by the supervisory board
- 23) giving consent to a transaction whose conducting is subject to interest, as specified by the [Law of Ukraine On Joint Stock Companies](#) , with provision of Article 52 of this Law taken into account
- 24) approval of the procedure for annual performance of the supervisory board, including criteria for assessing the strategy implementation and/or business plan for development of the SOB and the results of such assessment.

The powers to solve the issues, which are exclusively within the competence of the highest body, shall not be delegated to other SOB's management bodies. The highest body shall not have the right to make decisions on the SOB's activities, which are not within its exclusive competence. The highest body shall not perform the day-to-day management of the SOB.



The highest body shall have the right to obtain any information about the SOB's financial and economic activities, which is needed to exercise its powers, taking into account the provisions of this Law on bank secrecy.

The supervisory board is a joint SOB's managing body, which, within its competence, manages the SOB and controls and regulates activities of the SOB's executive body with the aim of implementing the SOB's strategy. The supervisory board, serving the SOB interests pursuant to this Law, shall protect the rights of depositors, creditors, and the state as a shareholder. [Article 37](#) hereof, covering collective suitability and effective management and control of the bank's activities, applies to the supervisory boards and the boards of SOBs.

The supervisory board shall consist of nine members, six whereof shall be independent and three remaining shall represent the state.

The members of the SOB's supervisory board shall meet the requirements of this Article and the requirements to bank's top manager, as specified in [Article 42](#) herein. Appointment of a person to the position of a member of the SOB's supervisory board shall be prohibited, if it can lead to a conflict of interest. A person whose criminal records were not expunged or conviction was not quashed as prescribed by the law, and/or a person that underwent disciplinary sanctions for committing offenses related to corruption shall not be a member of the supervisory board.

A person shall not be the member of the SOB's supervisory board in the following cases:

- 1) The person is or, during the last five years, was a top manager (except for an independent member of the supervisory board) of this SOB and/or of its branch, representative office, and/or other standalone unit, or of a legal entity in which the SOB has a qualifying holding.
- 2) The person is or, within the last five years, was an employee of the SOB and/or its branch, representative office, and/or other standalone unit or legal entity, in which this SOB has a qualifying holding.
- 3) The person is a related party (except for an independent member of the supervisory board) of this SOB.
- 4) The person receives or, within the last three years, received from the SOB or from legal entities in which the SOB has a qualifying holding, a sizable income other than remuneration for performing functions of a supervisory board member (a sizable income means the income exceeding 5% of the total annual income of such person for the relevant year).
- 5) The person is an owner of a qualifying holding, top manager, official, and/or member of the board or other management body, an employee of other bank registered in Ukraine, or a person that is in a position to influence decision making with respect to core activities and/or has a significant influence on management and activities of the other bank registered in Ukraine.
- 6) The person is authorized to perform functions of the state or local authorities (according to the list specified in [Article 3 part one paragraph 1 of the Law of Ukraine On Prevention of Corruption](#)).
- 7) The person is or, within the last two years, was an official holding a position of responsibility or special responsibility (the officials holding a position of responsibility or special responsibility mean the persons specified in the [Note to Article 50 of the Law of Ukraine On Prevention of Corruption](#)).

8) The person is or, during any period within the last three years preceding his/her appointment to the supervisory board of the SOB, was an external auditor of the SOB and/or of its branch, representative office, and/or other standalone unit, or of a legal entity in which the SOB has a qualifying holding.

9) The person takes part or, during any period within the last three years preceding his/her appointment to the supervisory board of the SOB, took part in an external audit of the SOB and/or of its branch, representative office, and/or other standalone unit, or of a legal entity in which the SOB has a qualifying holding.

10) The person has or, within the last year, had a material economic and/or civil law relationship with the SOB or with a legal entity in which the SOB has a qualifying holding, or he/she is an ultimate (beneficial) owner or official of a legal entity who has or had such relationship (the material economic and civil law relationship means the relationship as a result of which the person received or has the right to receive income or loan in the amount exceeding 5% of the income of such person for the previous accounting year).

11) The person is a member of the executive body of a legal entity, a member of the supervisory board of which is any top manager of the SOB.

12) The person is a connected person with the persons specified in paragraphs 1–11 of this part, in case appointment and tenure of this person as a member of the supervisory board of the SOB will cause the conflict of interest (the term 'connected person' has the meaning as specified in the [Law of Ukraine On Prevention of Corruption](#)).

A person shall not be a government agent in the SOB's supervisory board in the following cases:

1) The person is or, within the last five years, was a top manager (except a member of the supervisory board) of this SOB or of its affiliate, branch, representative office and/or other standalone unit.

2) The person is specified in part thirteen paragraphs 5, 6, and 8-11 of this Article.

3) The person is a connected person with the persons specified in paragraphs 1–2 of this part, if appointment and tenure of this person as a member of the supervisory board of the SOB may cause the conflict of interest (the term "connected person" has the meaning as specified in the [Law of Ukraine On Prevention of Corruption](#)).

4) The person is a related party (except for a supervisory board member who is the representative of the state) of this SOB.

5) The person is or, within the last three years, was an employee of the SOB and/or its branch, representative office, and/or other standalone unit or legal entity, in which this SOB has a qualifying holding.

6) The person receives or, within the last three years, received from the SOB or from legal entities in which the SOB has a qualifying holding, a sizable income other than remuneration for performing functions of a supervisory board member (a sizable income means the income exceeding 5% of the total annual income of such person for the relevant year).

One government agent in the supervisory board shall be appointed by the highest body, with his/her candidacy proposed by the President of Ukraine, one government agent shall be appointed on the recommendation of the Cabinet of Ministers of Ukraine, and another one shall be appointed on the recommendation of the relevant Verkhovna Rada of Ukraine Committee whose authority includes matters of banking activities.

To decide on the candidates to the supervisory board the Cabinet of Ministers of Ukraine shall appoint the selection committee that will comprise one representative of the President of Ukraine, three representatives of the Cabinet of Ministers of Ukraine, and one representative of the relevant Committee of the Verkhovna Rada of Ukraine. The Cabinet of Ministers of Ukraine shall set the requirements to the selection committee members.

Representatives of international financial organizations may participate in the selection committee, fulfilling a consultative role.

The selection committee shall examine the candidates for the positions of independent members of the supervisory board for their compliance with the requirements set forth in this Law.

The candidates for the positions of independent members of the supervisory board shall be competitively selected in line with the procedure set out by the Cabinet of Ministers of Ukraine.

Solely the candidates who have been approved under the terms of an open contest by the recruiting company selected by the Cabinet of Minister of Ukraine, pursuant to the procedure set by it, from the companies having international experience of at least 10 years in recruiting senior managers for banks, shall be approved to take part in the contest. The recruitment company shall submit a list of candidates to the selection committee for their selecting and preparing the list for submission to the highest body. The recruitment company shall be involved on a fee basis with the payment made out of SOB's funds and/or other sources not prohibited by the law.

Independent members of the supervisory board shall be appointed by the highest body, based on the submission by the selection committee, within five business days from the date of the relevant submission. The members of the supervisory board of a SOB shall take office after they are approved by the NBU in line with [Article 42](#) hereof.

The exclusive competence of the supervisory board shall cover decision-making on the issues stipulated by Article 39 [part seven](#) of this Law, as well as the following issues:

- 1) giving consent to carrying out a material transaction or submitting this issue for consideration of the highest body
- 2) giving consent to carrying out a transaction whose conducting is subject to interest, as specified by the [Law of Ukraine On Joint Stock Companies](#), with provisions of Article 52 of this Law taken into account
- 3) approving the regulation on the SOB board
- 4) considering a report of the SOB board and approving the measures based on the results of its consideration
- 5) considering findings of the external and internal audit and approving the measures based on the results of their consideration
- 6) approving the principles (code) of the SOB corporate governance
- 7) making decisions on forming committees of the SOB's supervisory board and approving provisions on them
- 8) making decisions on other issues falling into jurisdiction of the SOB's supervisory board pursuant to the SOB's charter.

The issues falling exclusively into jurisdiction of the SOB's supervisory board shall not be resolved by other SOB's management bodies, except submitting for consideration by the highest body of the issue on giving consent to carrying out a material transaction pursuant to part twenty two, paragraph 1 of this Article.

After determining by the highest body of the SOB's core (strategic) activities, its supervisory board shall ensure drafting of the SOB's strategy, approve it and submit for adoption to the highest body pursuant to the procedure set forth in the SOB's charter and in the provision on the SOB's supervisory board. The SOB's strategy envisages achieving the goals related to the SOB's core (strategic) activities, which were set by the highest body, and includes expected indicators of SOB's the performance. The SOB's strategy shall be aimed at increasing the market value of the SOB in the long term, taking into account market conditions. The highest body shall refuse the approval of the SOB's strategy in case the strategy is not in line with the SOB's core (strategic) activities determined by the highest body, or there are a lot of significant shortcomings that may prevent from implementing the strategy. In case of disapproval of the SOB's strategy, the highest body shall give it back for finalization, specifying comments and objections. In case of the second disapproval of the strategy, the highest body has the right to terminate the powers of all the members of the SOB's supervisory board, with the grounds for disapproval of the SOB's strategy disclosed.

The term of office of the supervisory board members shall be three years.

The highest body shall start the competitive selection of candidates for the positions of independent members of the SOB's supervisory board no later than four months prior to the expiry of the term of office of the SOB's supervisory board. If, after the expiry of the term of office of the SOB's supervisory board, the highest body has made no decision on appointment of new members of the SOB supervisory board, the supervisory board continues performing its functions until its new members are appointed. In the event of reappointment of a person to the position of an independent member of the supervisory board he/she is not required to take part in the competitive selection. A person cannot hold the position of a member of the supervisory board more than two consecutive terms.

The members of the supervisory board shall enter into civil law agreements stipulating the rights, duties, and working conditions of the members of the supervisory board, including the amount of their remuneration. The amount of remuneration for the members of the supervisory board, including fringe benefits, shall be set by the highest body, taking into account selection committee proposals made when conducting the competitive selection of candidates to the positions of independent members of the supervisory board. The SOB shall bear the expenses for labor remuneration of the members of the supervisory board.

The supervisory board shall be headed by the chairman elected by the supervisory board from among its independent members.

Six members of the supervisory board constitute a quorum. Supervisory board decisions shall be adopted by a simple majority of votes of those present at the meeting of the supervisory board in case no greater number of votes shall be set by the SOB charter for making the relevant decision. The procedure for convening and holding meetings, voting, and making and documenting decisions of the supervisory board shall be specified by the SOB charter and regulation on the supervisory board.

The members of the supervisory board, independently and at their discretion, shall make decisions on voting on all the issues on the agenda of the meeting of the supervisory board. The members of the supervisory board shall conscientiously perform their duties, inure to the benefit of the SOB, and avoid the conflict of interest.

Independent members and government agents in the SOB supervisory shall have equal rights and duties, except in cases specifies in this Article. The members of the supervisory board shall have the right to obtain any information (including information constituting bank secrecy) about the SOB, with provisions of this Law with respect to bank secrecy taken into account.

The supervisory board shall, in a mandatory manner, set up an audit committee, committee on risk management, and committee on issues related to appointments and remuneration for officials. The committee on risk management and committee on issues related to appointments and remuneration for officials shall be headed by independent members of the supervisory board. Independent members of the supervisory board shall constitute a majority in the above committees. The committee on risk management and committee on issues related to appointments and remuneration for officials shall be headed by independent members of the supervisory board. The supervisory board may also form other committees. The procedure for setting up committees of the supervisory board and their activities shall be specified by the SOB charter, regulation on the supervisory board, and regulation on its committees.

The powers of a supervisory board member may be terminated before his/her term of office ends, solely based on the following:

- 1) failure to implement the SOB strategy or business plan, which is confirmed by results of an annual assessment that shall be carry out pursuant to the procedure specified by the highest body
- 2) repeated disapproval by the highest body of the SOB strategy approved by the supervisory board
- 3) establishing a fact of failure of a supervisory board member to meet the requirements set forth in part thirteen or fourteen of this Article
- 4) on demand of no less than five members of the supervisory board or of the NBU, if the member of the supervisory board inappropriately performs their official duties or does not meet the eligibility requirements
- 5) submission by the member of the supervisory board of a resignation letter, in case such letter is submitted no less than two weeks prior to termination of his/her term of office
- 6) submission by the member of the supervisory board of a resignation letter in case the member is incapable to perform his/her duties due to health reasons
- 7) coming into effect of a verdict or court decision according to which a member of the supervisory board has been sentenced, which shall exclude the possibility of performing the duties of the SON supervisory board member
- 8) coming into effect with respect to a member of the supervisory board of a court decision on enforcement of administration sanctions for commission of the offence related to corruption
- 9) death of a member of the supervisory board, recognition of him/her to be disable, partially incapacitated, disappeared or deceased
- 10) introduction by the Deposit Guarantee Fund of the provisional administration in the SOB or beginning of the liquidation procedure of the SOB
- 11) the recall by the President of Ukraine of the government agent in the supervisory board who was appointed on the recommendation of the President of Ukraine; the recall by the Cabinet of Ministers of Ukraine of the government agent in the supervisory board who was appointed on the

recommendation of the Cabinet of Ministers of Ukraine; and the recall by the relevant Verkhovna Rada of Ukraine Committee whose authority includes matters of banking activities, of the government agent in the supervisory board who was appointed on the recommendation of the relevant Committee of the Verkhovna Rada of Ukraine.

The highest body shall make a decision on termination of office of a supervisory board member based on provisions specified in part thirty three paragraphs 1–4 of this Article; a decision on early termination of office based on provisions specified in part thirty three paragraphs 1–2 of this Article shall be made solely with respect to all the members of the supervisory board. The powers of a supervisory board member shall be early terminated based on provisions specified in part thirty three paragraphs 5–11 of this Article, due to relevant circumstances, without a decision of the highest body.

In case of early termination of powers of an independent member or all the members of the supervisory board the competitive committee shall be obliged, within a month, to determine the applicants for the vacant positions of independent members of the supervisory board out of the candidates selected by the recruitment company during the previous contest, as prescribed in parts sixteen–twenty of this Article. In case it is impossible to determine the applicants for the vacant positions of independent members of the supervisory board out of the candidates preliminary selected by the recruitment company pursuant to part twenty of this Article, the highest body shall be obliged to start a new competitive selection of the applicants for the positions of independent members of the supervisory board pursuant to parts sixteen–twenty of this Article.

In case of early termination of powers of the government agent in the supervisory board who was appointed on the recommendation of the President of Ukraine, Cabinet of Ministers of Ukraine, or the relevant Verkhovna Rada of Ukraine Committee whose authority includes matters of banking activities, the respective body shall recommend, within a month, a new government agent to the supervisory board.

The highest body shall have the right at any time to suspend a member of the supervisory board for a term not exceeding six months solely based on the following:

- 1) on demand of no less than five members of the supervisory board in case the member of the supervisory board inappropriately perform his/her official duties or does not meet the requirements set forth in part thirteen or part fourteen of this Article
- 2) serving a notice to a member of the supervisory board about suspicion of having committed a criminal offence
- 3) on demand of the President of Ukraine on suspension of the government agent in the supervisory board who was appointed on the recommendation of the President of Ukraine; on demand of the Cabinet of Ministers of Ukraine on suspension of the government agent in the supervisory board who was appointed on the recommendation of the Cabinet of Ministers of Ukraine; and on demand of the relevant Verkhovna Rada of Ukraine Committee whose authority includes matters of banking activities, on suspension of the government agent in the supervisory board who was appointed on the recommendation of the relevant Verkhovna Rada of Ukraine Committee whose authority includes matters of banking.

The SOB's executive body performing the day to day management of the SOB is the SOB Board. A chairperson and members of the SOB board shall be appointed and dismissed to/from their positions by the supervisory board upon a proposal of the supervisory board committee on issues related to appointments and remuneration for officials. The SOB's supervisory board committee on issues related to appointments and remuneration for off shall appoint candidates for the positions of the chairperson and members of the SOB board upon the competitive selection held in line with the

procedure defined by the SOB's supervisory board. The competitive selection for the position of the chairperson or a member of the board of a SOB shall be announced at least three months before the expiration of the term of office of the chairperson or a member of the board of the SOB, respectively. The term of office of the chairperson and members of the board of a SOB is determined by the charter of the SOB and may not exceed five years, with possible appointment for a new term based on the results of a competitive selection. The powers of the SOB board shall be specified by the SOB charter. The procedure for convening and holding meetings, voting, and making and documenting decisions of the SOB board shall be defined in the SOB charter and the regulation on the SOB board. The chairperson and members of the SOB board shall conscientiously perform their duties, inure to the benefit of the SOB, and avoid the conflict of interest. The chairperson and members of the SOB board shall meet the eligibility requirements.

A managing agent of the state-owned bank shall be obliged to monitor the existing and potential threats to the national security of Ukraine and, in the event of their detection, take measures to neutralize their impact on the bank's operation. The list of specific measures shall be determined by the managing agent or, by its decision, by the bank's top manager in accordance with their powers and may include, in particular, determining the address of location of this bank as an exclusive place to perform the duties of the top manager, their deputies, members of the collegial executive body (or a person exercising the powers of the one-person executive body), members of the supervisory board, and other officials of the state-owned bank, and setting a special working regime for said persons. In the event of taking the decision on determining the respective measures, said persons shall be obliged to immediately arrive at the location of this bank to perform their duties.

Violations by the top manager, their deputies, members of the collegial executive body (or a person exercising the powers of the one-person executive body), members of the supervisory board, and other officials of the state-owned bank of part thirty nine of this Article shall be the grounds for early termination of powers (dismissal) of said officials and termination of a contract (civil law contract) with these persons regardless of the term of such contract (civil law contract) and without payment of appropriate compensation payments (if such payments are provided by the concluded contracts (civil law contracts) or by a collective agreement being in force in the state-owned bank).

The NBU shall approve the chairperson and members of the SOB's board in line with Article 42 hereof. The chairperson of the SOB board shall take office after their approval by the NBU.

Financial statements of the SOB shall be subject to mandatory auditing by an audit firm pursuant to Article 70 herein.

The central executive body that is responsible for developing the government financial policy shall have the right to obtain any information about SOB financial and economic activities, including information constituting bank secrecy, which is required to monitor SOB activities and implementation of the SOB strategy.

The SOB and the Cabinet of Ministers of Ukraine may enter into a framework agreement on cooperation, which regulates cooperation between the SOB, Cabinet of Ministers of Ukraine, and central executive body, which ensures formation of the government financial policy. A chairman of the supervisory board and a chairman of the SOB board shall sign the agreement on behalf of the SOB. The framework agreement on cooperation is subject to publication on official websites of the SOB and central executive body ensuring government financial policy development.

The SOB shall not provide unreasonable benefits to individual customers or conduct transactions with customers under conditions that are not current market ones.

An obligation to develop and implement the annual financial plan pursuant to the [Commercial Code of Ukraine](#) shall not apply to the SOB.

In case of acquisition by the state of title to 100% of bank's shares the provisions of this Article shall be applied to such a bank a year after the acquisition by the state of title to 100% of the bank's shares. Members of the supervisory board of the bank, who were appointed prior to the application to the bank of the provisions of this Article, shall exercise their powers within the term they were appointed for in case their powers were not terminated pursuant to the law, but not exceeding three years from the date of their appointment.

In case of partial or complete alienation by the state of its shares in a SOB, such a bank shall be deprived of the SOB status on the day following such alienation. The provisions of this Article shall not be applied to the bank from the day it loses the SOB status, while the charter and internal regulations of such bank shall be applied to the extent when they do not contradict this Law, other laws of Ukraine, and NBU regulations. The shareholders shall bring the charter and activities of the bank that has lost the SOB status in compliance with the requirements of this Law, other laws of Ukraine, and NBU regulations. The supervisory board of the bank that has lost the SOB status shall, within a month from the day the bank has lost its SOB status, convene a general meeting of the shareholders with the aim of bringing the bank's charter and activities in compliance with the requirements of this Law, other laws of Ukraine, and NBU regulations. The supervisory board and the board of the bank that has lost the SOB status shall continue exercising their powers until termination of their powers as prescribed by the law.

## **Article 8. Cooperative Banks**

A cooperative bank shall be established pursuant to the procedures stipulated by the present Law. The laws on the cooperative societies shall be applied to the cooperative banks to the extent when they do not contradict the present Law.

A cooperative bank shall be established under the territorial principle and may be either local or central cooperative bank.

The minimum number of shareholders in the local (within an oblast) cooperative bank shall be not less than 50 persons. If this number has decreased and the cooperative bank in question is unable to increase it to the minimum needed within a year, the operation of such a bank shall be terminated by changing its organizational and legal form or through the liquidation.

The local cooperative banks shall be participants in the central cooperative bank.

In addition to the functions stipulated by the present Law, the central cooperative bank shall engage in the centralization and re-allocation of resources accumulated by the local cooperative banks, and supervise the activities thereof at the regional level.

The general meeting of shareholders (stakeholders), the supervisory board, and the board shall be the management bodies of the cooperative bank. The revision commission shall be the cooperative bank's control body. The management and control bodies of the cooperative bank shall be set up and exercise their powers in accordance with the present Law.

The authorized capital of the cooperative bank shall be divided into stakes. The minimum size of the cooperative bank authorized capital shall be established by the NBU under the present Law.

Each stakeholder of a cooperative bank shall have the right to one vote irrespective of the size of his/her participation in the bank capital (stakes).



Cooperative bank profits or losses resulting from the performance in the fiscal year shall be divided among the stakeholders in proportion to the size of their stakes.

The restrictions imposed by the present Law on bank operations with related parties shall not be applicable to operations of the cooperative bank.

### **Article 9. Consolidated Banking Supervision**

Consolidated banking supervision is the supervision exercised by the NBU over the banking group with the purpose of ensuring the banking system stability and mitigating the risks a bank faces due to participation in the banking group by means of regulation, monitoring and control of the risks of the banking group according to the procedure established by the NBU.

The NBU, in order to carry out the consolidated supervision, is entitled to determine within a banking group subgroups consisting of at least two banking group participants and oversee them on the basis of subconsolidated supervision.

Criteria for determining such subgroups shall be set by the NBU regulations.

The banking group, subgroups of the banking group, and participants of the banking group shall meet the requirements established by the NBU in accordance with this Law.

The NBU shall have the right to determine the conditions under which a banking group participant is not subject to the requirements established by the NBU pursuant to this Law, including those related to incorporating the reporting of banking group participants when compiling the consolidated/subconsolidated reporting, considering the asset size of the banking group participants, the ratio of their assets to the consolidated assets of the banking group, nature of their activities and relationship with other banking group participants.

The NBU is entitled to set requirements to the banking group and/or subgroups of the banking group on the consolidated and subconsolidated basis regarding the following:

- 1) organization of an efficient system of the corporate governance
- 2) organization of a comprehensive, adequate, and efficient system for internal control, including risk management and internal audit
- 3) availability of the accounting procedures and information systems necessary to ensure compliance with the requirements on the consolidated basis
- 4) compilation and procedure for submitting the consolidated and subconsolidated reporting
- 5) capital adequacy of the regulatory capital
- 6) economic ratios
- 7) limits and restrictions regarding certain types of activities, including with regard to the activities on the territory of other countries
- 8) procedure for submitting the necessary reporting and data
- 9) drafting plans to maintain business continuity, crisis financing, and recovery.

The NBU is entitled to prescribe to the banking group and/or subgroups of the banking group the debt-to-equity ratio (leverage), set its value and a procedure for its calculation.

An entity or individual intending to become the controller of a banking group shall, via their authorized person, inform the NBU and submit to the latter the data on such a banking group, including on the ownership structure of the banking group and types of activities of the participants therein, according to the procedure established by the NBU.

In the event of identification of a banking group that has not been identified by the banking group controller or has not been identified by them in its entirety, the NBU, in accordance with the procedure stipulated by it, shall identify such banking group and take a decision on the recognition of the banking group or the recognition of changes in the ownership structure of the banking group.

The NBU shall have the right to require that the controller of the bank, banking group, banking group participants, and other legal entities and individuals submits the information and copies of the documents needed to identify the banking group. The controller of the bank, banking group, banking group participants, and other legal entities and individuals shall be obliged to provide the NBU, upon its written request and by the deadline set by it, with relevant information and copies of the documents.

Nonbank financial institutions being members of the banking group are subject to the supervision of the NBU within the framework of supervision on the consolidated and subconsolidated basis according to this Law.

The chief of the bank holding company, his/her deputies, members of the executive body and supervisory board, and the chief accountant shall meet the requirements to the managers of banks established by this Law.

The banking group shall choose among the banking group participants a responsible entity of the banking group, which is the bank able to ensure compliance with the NBU requirements to the banking group and seek the NBU approval of the selected candidate. In the banking group that includes a parent bank, the parent bank shall be such responsible entity.

Approval of the responsible entity of the banking group by the NBU shall be done in line with procedure set by the NBU.

Before the approval of the banking group responsible entity by the NBU or in the case the latter has decided that the responsible entity appointed by the banking group is unable to exercise said duties, the duties shall be exercised by the banking group participant bank having the highest assets in the last reporting period (quarter).

The banking group participant shall, not later than 10 business days after a change in its ownership structure and/or activity types, be obliged to inform thereof the banking group responsible entity.

The banking group responsible entity shall be obliged to inform the NBU about any changes in the banking group's ownership structure and/or activity types of its participants not later than 30 calendar days after such changes occur.

The NBU shall have the right to request from the banking group responsible entity information on the banking group participants that is needed to carry out banking supervision on the consolidated basis. The banking group responsible entity shall be obliged to provide the NBU, upon the NBU's written request and by the deadline set by it, with relevant information.

The banking group responsible entity shall be obliged to ensure meeting by the banking group and the subgroups of the banking group the requirements established by the NBU in accordance with this Law.

The banking group responsible entity shall compile consolidated/subconsolidated reporting on the basis of reports of the banking group participants according to the procedure established by the NBU.

The banking group participants shall be obliged to submit to the banking group responsible entity the reports, data, and documents necessary for preparation of the consolidated reports as well as ensure meeting the requirements regarding the consolidated supervision.

The total amount of the direct and/or indirect participation of the banking group participants in the authorized capital of a legal entity not being a financial institution shall not exceed 15 percent of the regulatory capital of the banking group.

The total amount of the direct and/or indirect participation of the banking group participants in the authorized capital of all legal entities not being financial institutions shall not exceed 60 percent of the regulatory capital of the banking group.

Based on the findings of the assessment of the banking group carried out within the scope of the consolidated supervision in accordance with procedures set by the NBU, the NBU shall be entitled to:

- 1) set increased requirements for capital adequacy and values of economic ratios
- 2) require that the responsible person and management of the banking group, controller of the banking group take measures aimed at rectifying violations of banking laws, meeting the requirements of NBU regulations, maintaining capital and liquidity at a level sufficient to cover all material risks of the banking group and/or subgroups of the banking group, improving the quality of corporate governance, internal control system, including risk management system.

The NBU shall control the transactions between the banking group participants and transactions between the the banking group participants and their related parties.

The banking group responsible entity shall be obliged to ensure conduct of an annual audit of the annual consolidated financial statements of the banking group by an audit firm pursuant to the laws of Ukraine and submit the findings of this audit to the NBU according to the procedure set forth by it. Requirements for conducting the annual audit by the banking group participants shall be determined by NBU regulations.

The NBU shall have the right to request the banking group responsible entity to broaden the audit scope according to the procedure and extent determined by NBU regulations.

The banking group responsible entity shall have the right to enter into agreements on conducting an annual audit of the annual consolidated financial statements of the banking group with one and the same audit firm, but not more than seven consecutive years.

An audit firm (auditor) that is involved in the audit of the annual financial statements of the banking group participant, of the annual consolidated financial statements of the banking group and/or render other auditing services shall be obliged to notify the NBU in writing of violations of the banking law that were found when conducting the audit and/or rendering other auditing services, and of any events or facts constituting a serious threat to security and reliability of the banking group participant or the whole banking group and raising doubt as to their capability to continue to operate in the foreseeable future, not later than on the day following the day the violations are found.

The audit firm (auditor) shall, at the request of the NBU, be obliged to furnish the latter with the working documents related to audit of the annual financial statements of the banking group participant or annual financial consolidated statements of the banking group.

#### **Article 10. Excluded**

#### **Article 11. Excluded**

#### **Article 12. Excluded**

#### **Article 13. Bank Unions and Associations**

In order to protect and represent interests of its members, develop interregional and international relations, ensure research and information exchange as well as the professional interests, develop the recommendations related to banking activities, the banks shall have the right to set up non-profit unions or associations.

The unions or associations shall not have the right to perform banking or entrepreneurial activities, and may not be established in order to gain profit.

The association (union) of banks is a contractual association of banks, which has no right to interfere with activity of the member banks of the association (union).

## **Section II. ESTABLISHMENT, STATE REGISTRATION, LICENSING, AND REORGANIZATION OF BANKS**

### **Chapter 2. ESTABLISHMENT OF BANKS**

#### **Article 14. Bank Participants**

Parties to the civil law relations may be participants in a bank. The Ukrainian state, represented by the Cabinet of Ministers of Ukraine (the CMU) or a body authorized by the CMU, may be a participant in a bank.

Founders of a bank and owners of qualifying holdings in a bank shall have an irreproachable business reputation and a satisfactory financial/property standing.

Requirements as to the business reputation and satisfactory financial/property standing of the founders, qualifying shareholders (stakeholders) and shareholders (stakeholders) that are going to acquire or increase a qualifying holding in a bank are established by the NBU.

Legal entities, in which the bank has a qualifying holding, as well as nongovernmental organizations, political parties, religious and charity organizations may not become the bank participants.

Collective investment vehicles may be the founders of a bank or qualifying shareholders in a bank only if such vehicles are a corporate investment fund over 75 percent ownership of which and over 75 percent ownership (shares) of an asset managing company of which is directly and/or indirectly held by one entity or a group of associates.

#### **Article 15. Name of a Bank**

A bank shall have a full name in Ukrainian and in a foreign language (foreign languages). The bank also may have an abbreviated name in Ukrainian and in a foreign language (foreign languages). The bank name shall contain the word "bank," as well as a reference to the organizational and legal form of the bank.

The bank may have a seal with its full name.

The word "bank" and its derivative words may only be used in the name of those legal entities that have been registered by the NBU as a bank and have a banking license. An exception is made for international organizations, which operate in the territory of Ukraine in conformity with the international agreements, ratified by the Verkhovna Rada of Ukraine, and the effective laws of Ukraine.

It is not allowed to use a bank name that repeats the name of an existing bank or misleads one as to the types of activity the bank performs. The use of the words "Ukraine", "", "central", "national" and derivatives thereof in the name of a bank is possible only upon consent of the NBU. Solely a state-owned bank shall have the right to add to its name a word "state-owned" and use the Coat of Arms of Ukraine and National Flag of Ukraine.

The NBU shall have the right to refuse the usage of the proposed name of a bank due to the reasons set forth in this Article.

A bank's standalone unit shall only use the name of the bank of which it is a standalone unit. The name of the location of this standalone unit may be added to the name of the bank's standalone unit.

## **Article 16. Bank Charter**

The charter of the bank shall meet the requirements of the [Civil Code](#) of Ukraine, [Commercial Code of Ukraine](#), [Law of Ukraine On Joint Stock Companies](#), this Law, and other laws of Ukraine.

The bank charter shall contain without fail the following information about the bank:

- 1) name of the bank, including the abbreviated name (if available)
- 2) location of the bank
- 3) form of business organization
- 4) type of operations to be performed by the bank
- 5) size and procedure for formation of the bank authorized capital, types of the bank shares, their face value and total number
- 6) structure of the bank management, management bodies, their authority and decision-making procedure
- 7) procedure for reorganization and liquidation of the bank in accordance with Chapters 5 and 16 of the present Law
- 8) procedure for introducing amendments to the bank charter
- 9) size and procedure for the formation of reserves (provisions) and other general funds of the bank
- 10) policy on the profit distribution and cover of losses
- 11) provision on conducting bank audits
- 12) provision on internal audit of the bank.

The bank shall have the right to submit its draft charter to the NBU to obtain a conclusion on the compliance of the draft charter with the requirements of the Ukrainian laws. The NBU shall consider the bank's draft charter in the manner and within the timeframe specified by NBU regulations.

Changes of the bank charter shall be subject to the state registration in accordance with the laws on the state registration of legal entities and sole proprietors with taking into account the particularities introduced by the present Law.

The bank shall submit to the NBU the documents on approval of the amendments to the bank charter related to an increase of the authorized capital of the bank only after full payment of the contributions thereto by the bank participants.

The bank shall submit the documents on approval of the amendments to the bank charter related to an increase of the authorized capital of the bank only after full payment of the contributions thereto by the bank participants.

The list of documents and the procedure of approval of the amendments to the bank charter shall be established by the NBU.

The decision on approval or denial of the amendments to the bank charter shall be taken by the NBU not later than within one month from the moment the full package of documents is submitted.

The NBU shall, in accordance with the procedure established by it, make the respective entry into the State Register of Banks after the state registration of amendments to the charter documents.

### **Chapter 3. STATE REGISTRATION AND LICENSING OF BANKS**

#### **Article 17. Establishment and State Registration of the Legal Entity Intending to Engage Itself in Banking**

A legal entity intending to engage itself in banking shall be established in accordance with the Ukrainian laws taking into account the particularities introduced by the present Law.

The legal entity intending to engage itself in banking shall submit the documents for its state registration only after the approval of the charter of this legal entity by the NBU.

A person authorized by the founder(s) of the legal entity intending to engage itself in banking, for the approval of the charter thereof, shall submit to the NBU together with the application for the charter approval the following documents:

1) minutes of the meeting of founders and foundation meeting, agreement on bank establishment or the Resolution on the establishment of a state bank

2) bank charter

3) copies of the documents specified by the NBU required to identify the founder and all other persons through which the indirect ownership of the qualifying holding in the bank is likely to be exercised

4) documents specified by the NBU that contain information on the following:

compliance of the business reputation of the founder, and if the latter is a legal entity, then also that of the business reputation of the members of the executive body and/or supervisory board thereof, as well as of all the persons through which the indirect ownership of the qualifying holding in the legal entity intending to engage itself in banking is likely to be exercised, with the requirements set forth by the NBU

compliance of the financial standing of the founder being a legal entity, property status of the founder being an individual, and financial standing/property status of all entities/individuals which will have indirect qualifying holding in the legal entity intending to engage itself in banking, with the requirements set forth by the NBU

whether the founder(s) has enough own funds to make the declared contribution to the authorized capital, sources of such funds

5) documents confirming the full payment of the contributions to the authorized capital by the founders

6) data on the ownership structure of the legal entity intending to engage in banking and of the founder obtaining the qualifying holding therein according to the NBU requirements

- 7) information, in the form required by the NBU, on the associated persons of the founding individuals
- 8) information, in the form required by the NBU, on the legal entities under the management and/or control of the founding individual
- 8<sup>1</sup>) information, in the form required by the NBU, on the bank's related parties that fall under criteria defined in part 1 of Article 52 hereof
- 9) a copy of the interim certificate of registration of the issue of shares
- 10) a conclusion (preliminary conclusion) made by the Antimonopoly Committee of Ukraine as regards concentration and/or permission received from the Antimonopoly Committee of Ukraine for concentration, as provided by the Ukrainian laws
- 11) a copy of the payment document confirming payment of the fee for approval of the bank's charter in an amount determined by the NBU.

A person authorized by the founder(s) of the legal entity intending to engage itself in banking, for the approval of the charter thereof, shall submit to the NBU additionally the documents prescribed by [part two](#) of Article 34<sup>1</sup> hereof about the founders being foreign legal entities, and by [part three](#) of Article 34<sup>1</sup> hereof about the founders being foreign individuals.

A person authorized by the founder(s) of a legal entity intending to engage itself in banking, in order to agree acquisition of qualifying holding in this legal entity, shall be obliged to submit to the NBU the set of documents, as set forth in Article 34<sup>1</sup> [parts one–three](#) herein, regarding the founders being owners of a qualifying holding in this legal entity and the persons intending to be indirect owners of a qualifying holding in this legal entity.

The NBU shall take a decision on approval or denial of the bank charter not later than within three months from the moment the full package of documents stipulated hereby is submitted. Concurrently with consideration of the issue on approval of the charter, the NBU shall consider the issue on approval or denial of acquisition of a qualifying holding in the legal entity intending to engage itself in banking, pursuant to [Articles 34 and 34<sup>1</sup> herein](#). [The approval of acquisition of a qualifying holding in the legal entity intending to engage itself in banking is a prerequisite for the approval of the charter of this legal entity by the NBU.](#)

The NBU shall have the right to request, and the founder(s) of the legal entity intending to carry out banking activities, and the persons that will acquire a qualifying holding in this legal entity after its state registration, and other persons that had or have legal relationship with the entity to which the request relates shall be required to provide the NBU with additional information, documents, and explanations necessary to clarify/verify the documents/information provided in accordance with the requirements of this article, and/or to confirm compliance with the requirements established by the Ukrainian laws.

The NBU has the right to require the submitted documents to be emended.

The founder(s) of the legal entity intending to engage itself in banking as well as the persons/entities that will acquire qualifying holding in this legal entity after its state registration shall be obliged to provide the NBU with the documents specified in NBU regulations to prove the compliance of their financial standing/property status and business reputation with the requirements set forth by the Ukrainian laws.

The founder(s) of the legal entity intending to engage itself in banking shall be prohibited from alienating their shares (stakes) in such legal entity or imposing liabilities thereon, and holders of the indirect qualifying holding in this entity shall be prohibited from alienating their holding in the entity before a banking license is issued to this legal entity. The transaction carried out in violation of this prohibition shall be deemed null and void. The NBU shall inform in writing the legal entity intending to engage itself in banking, the parties to such transaction, the depository institutions serving the securities accounts of the parties to such transaction, and the Central Securities Depository that the transaction is deemed null and void, and post the relevant information on the NBU's official website no later than on the next business day after becoming aware of the transaction.

Commencing a banking business without a license is prohibited.

The persons, culpable of carrying out banking business without a banking license, shall bear criminal, civil or administrative responsibility in accordance with the laws of Ukraine.

### **Article 18. Grounds for Refusal to Approve the Charter of the Legal Entity Intending to Engage in Banking**

The NBU is entitled to refuse the charter approval to the legal entity intending to engage itself in banking, if:

- 1) an incomplete package of the documents necessary for the charter approval has been submitted
- 2) the documents contain false information
- 3) the documents do not meet the requirements and/or contain information/data testifying to violation of the Ukrainian laws in effect or NBU regulations
- 4) the business reputation of the founder and, if the founder is a legal entity, also that of its executive body and/or supervisory board members, and/or at least one person through whom they will exercise an indirect ownership of the qualifying holding in the legal entity intending to engage itself in banking, does not meet the requirements set forth by the NBU
- 5) the financial standing of a founder being legal entity and/or the property status of a founder being individual, and/or the financial/property standing of at least one entity through which the indirect ownership of a qualifying holding in the legal entity intending to engage itself in banking is likely to be exercised, does not meet the requirements set forth by the NBU
- 6) the founder had not enough own funds to make the declared contribution to the authorized capital and/or the sources of origin of these funds are unconfirmed
- 7) the pattern of ownership of the legal entity intending to engage itself in banking and/or the entity obtaining the qualifying holding in this legal entity does not meet the transparency requirements set forth by the NBU
- 8) the paid-in authorized capital of the legal entity intending to engage itself in banking does not meet the requirements for the minimum authorized capital amount set forth by [Article 31](#) herein
- 9) at least one person among those, who will acquire qualifying holdings in the legal entity intending to engage itself in banking after its state registration, is prohibited from acquiring a qualifying holding in accordance with [Articles 34, 34<sup>1</sup>](#) of this Law.

The NBU is not entitled to refuse the charter approval to the legal entity intending to engage itself in banking on the basis of any grounds not specified in this Article.



## Article 19. Banking License

The legal entity intending to engage in banking shall, within one year from the state registration date, submit to the NBU, in accordance with the procedure prescribed herein and in the NBU regulations, documents necessary to obtain the banking license.

The legal entity intending to engage in banking, in order to obtain the banking license, shall submit the following documents to the NBU together with the banking license application:

- 1) Article 19 part 2 paragraph 1 was excluded.
- 2) Article 19 part 2 paragraph 2 was excluded.
- 3) copies of the report registered by the National Securities and Stock Market Commission on the results of private stock placement and certificate of registration of issue of shares (for a bank established as a joint stock company)
- 4) information on the number of members of the bank's supervisory board and the board
- 5) information and documents specified by the NBU to confirm the following:
  - availability of at least three persons appointed as members of the board, including the board chairperson
  - compliance of the bank's managers, the head of the internal audit function, the head of the risk management function, i.e. the chief risk officer, the head of the compliance function, i.e. the chief compliance officer, with eligibility requirements
  - compliance of the bank's supervisory board and the board with the requirements for collective suitability set by the NBU
  - availability of the banking equipment, computers, information systems and other information resources needed to achieve the bank's goals, premises compliant with the NBU requirements, organizational structure and relevant professionals needed to ensure rendering of banking and other financial services, as well as ensuring the conduct of internal control and risk management
- 6) copies of the bank charter that govern rendering of banking and other financial services, determine the procedure of internal controls and risk management
- 7) business plan for three years compiled according to the NBU requirements
- 8) a copy of the payment document confirming payment of the fee for receipt of the banking license in an amount determined by the NBU.

To obtain the banking license, the legal entity intending to engage in banking shall concurrently submit to the NBU all the documents and information stipulated by the present Law.

The NBU shall have the right to request, and the founder(s) of the legal entity intending to carry out banking activities, the owners of the qualifying holding in it, and other persons that had or have legal relationship with the entity to which the request relates shall be required to provide additional information, documents, and explanations necessary to clarify/verify the documents/information provided in accordance with the requirements of this article, and/or to confirm compliance with the requirements established by the Ukrainian laws.

The legal entity intending to engage in banking shall be obliged to inform the NBU, in line with the procedure set forth by it, on any significant changes in the information and/or documents submitted by it to the NBU with the aim of obtaining the banking license.

The legal entity intending to engage in banking shall be obliged to ensure access for disabled persons and persons with reduced mobility to banking and other financial services, including access to premises where banks' clients are served.

The decision to grant or to deny the banking license shall be taken by the NBU within three months from the day it has received the full package of the documents as specified herein.

The NBU, within two business days from the day of taking the decision on the issue of the banking license, shall:

make a relevant entry in the State Register of Banks

provide the bank with an extract from the State Register of Bank, which contains information about the issue of the banking license.

The legal entity acquires the status of a bank and the right to engage itself in banking after receipt of the banking license.

The NBU shall post information on the issue of banking licenses on its official website in the manner prescribed by the NBU.

The managers of the bank, the chief risk officer, the chief compliance officer, the head of the internal audit function, and the owners of a qualifying holding shall meet, during all the time they retain their status in the bank or have the qualifying holding therein, the requirements stipulated by this Law, other laws of Ukraine, and NBU regulations.

### **Article 19<sup>1</sup>. Reasons for Refusal to Grant the Banking License**

The NBU is entitled to refuse to grant the banking license to the legal entity intending to engage itself in banking, if:

- 1) an incomplete package of the documents necessary for the charter approval has been submitted
- 2) the documents submitted to obtain the banking license contain false information
- 3) the documents submitted to obtain the banking license do not meet the requirements of the Ukrainian laws in effect or NBU regulations
- 4) the legal entity intending to engage in banking has applied for the banking license after more than one year from the date of the state registration thereof
- 5) at least one manager of the legal entity intending to engage itself in banking and/or the chief risk officer, and/or the chief compliance officer, and/or the head of the internal audit thereof do not meet the eligibility requirements
- 5<sup>1</sup>) organization of corporate governance and the system of internal control, including risk management system, of the legal entity intending to engage itself in banking is not in line with the volumes and complexity of activities that this legal entity is intending to engage in according to its strategy and/or business plan

- 6) at least three members of the board, including the board chairperson, have not been appointed
- 7) there is lack of the banking equipment, computers, information systems and other information resources, and premises meeting the NBU requirements
- 8) there is a lack of organizational structure and/or specialists needed to ensure the provision of banking and other financial services, exercise internal control, and manage risks, as required by law
- 9) the management structure, including the organizational one, and operational activities of the legal entity intending to engage in banking, or of the banking group a member whereof it will be, may impede the effective supervision by the NBU
- 10) the bank's strategy, business plan, financial indicators, inter alia, the capital adequacy ratio, fail to be sound and/or realistic (in particular, based on unrealistic data and include assumptions and possible forecasts that cannot be confirmed by calculations) and/or are indicative of the fact that the legal entity intending to engage in banking is unable to carry out banking activities as prescribed by laws of Ukraine.

The NBU shall have the right to refuse to grant the banking license to the legal entity intending to engage in banking, if its founder(s) and/or owners of a qualifying holding fail to meet the requirements of Article 17 [part ten](#) hereof.

The NBU shall take legal action for dissolution of the legal entity, if the latter (i.e. the entity intending to engage in banking) has not met the requirements of part one of Article 19 hereof, within one year from the date of state registration.

**Article 20. Excluded**

**Article 21. Excluded**

**Article 22. Excluded**

## **Chapter 4. STANDALONE UNIT OF THE BANK**

### **Article 23. Procedure for Establishment of Bank's Standalone Units in the Territory of Ukraine**

Any bank shall be entitled to establish the standalone units (branches, banking units, representative offices, etc.) in the territory of Ukraine.

The bank shall ensure the compliance of the standalone's operation with the requirements of the Ukrainian laws and the NBU's regulations.

The bank shall inform the NBU of establishment of such a standalone unit and of the changes in the operation of the standalone unit in the cases specified by the NBU.

The NBU shall include the information on bank standalone units and changes in their operation in the State Register of Banks upon the written notification from the bank.

The standalone unit in question is entitled to start its operation after 10 days from the notification of establishment of such a standalone unit by the bank to the NBU.

Requirements to the notification of establishment of a standalone unit and changes in its operation, as well as procedure for including information on standalone units and changes in their operation in the State Register of Banks shall be specified in the NBU's regulations.

The NBU shall have the right to make a decision on termination of the bank's standalone unit operations effected in favor or by order of clients, if the information about establishment of the standalone unit furnished by the bank comprises untrue data or if operation of such a standalone unit fails to meet the requirements of this Law and the NBU's regulations.

#### **Article 24. Procedure for Establishment of Foreign Bank Branches and Representative Offices in the Territory of Ukraine**

Foreign banks shall have the right to open branches and representative offices in the territory of Ukraine.

Any foreign bank shall have the right to open a branch in Ukraine, provided:

1) the country where the foreign bank has been registered has no admonitions of the respective international bodies on compliance with the international standards in the area of preventing and combating legalization (laundering) of proceeds from crime and terrorism financing

2) banking supervision in the country where the foreign bank has been registered, taking into account information obtained by the NBU, generally complies with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision, including ensuring effective supervision on the consolidated basis

3) the legal framework of the country where the foreign bank has been registered, according to the NBU's assessment conducted in line with its procedures, contains no provisions that can impede/limit cooperation between the NBU and the supervisory/controlling authorities of said country and/or deter the NBU from its exercise of supervisory functions regarding such branch of the foreign bank

4) minimum amount of the assigned capital of the branch for the time of its accrediting is not less than 120 million hryvnias

5) the foreign bank has issued a written commitment to unconditional fulfillment of the obligations arising from its branch activities in the territory of Ukraine.

The NBU shall carry out accreditation of the branches and representative offices of foreign banks in the territory of Ukraine according to the terms and conditions specified in this Law and in NBU regulations.

Accreditation of a foreign bank branch shall be effected by means of an appropriate entry in the State Register of Banks on the right of the foreign bank branch to be engaged in banking.

Accreditation of a foreign bank branch shall be the basis for its banking activity.

The following documents shall be submitted for accreditation of a foreign bank branch:

1) application of the foreign bank for establishment of a branch specifying its location in Ukraine

2) document confirming state registration of the foreign bank in its home country

- 3) decision by an authorized body of the foreign bank on establishment of the branch
- 4) regulation on the branch approved by the authorized body of the foreign bank
- 5) information that attests to fitness and propriety of the chief executive officer, chief accountant, chief risk officer, chief compliance officer, and chief internal auditor of the foreign bank branch under the NBU's requirements
- 6) a copy of charter of the foreign bank
- 7) financial statements of the foreign bank for the last three years approved by an independent auditor
- 8) written permit for establishment of a foreign bank branch in Ukraine granted by a state or other authorized regulatory body of the country where the foreign bank has been registered or a written assurance of the foreign bank as to absence of any legal requirements to obtain such a permit
- 9) notification from the supervisory authority of the foreign country on effecting the supervision of the foreign bank's activities
- 10) written obligation of the foreign bank on unconditional fulfillment of the obligations arising from its branch activities in the territory of Ukraine
- 11) documents confirming transfer of funds in an amount of the assigned capital of the branch
- 12) a copy of the payment order for transferring the fee for accreditation of the foreign bank's branch as charged by the NBU
- 13) copies of the bank bylaws (a list thereof) that govern rendering of banking and other financial services, determine the procedure of internal controls and risk management
- 14) the information in a form established by the NBU that allows to conclude on availability of the organizational structure and competent professionals necessary to ensure rendering of banking and other financial services, banking equipment, computers, software, premises compliant with the NBU requirements
- 15) a business plan for three years compiled according to the NBU requirements
- 16) the documents specified by the NBU that allow to conclude on the business reputation of the foreign bank
- 17) data determined by the NBU with regard to the owners of qualifying holdings in the foreign bank in question.

Activity of the foreign bank branch shall meet the requirements set by this Law and NBU regulations. The NBU shall regulate activity and set the economic ratios for foreign banks' branches according to the requirements of the Ukrainian laws.

The NBU shall have the right to refuse accreditation of a foreign bank branch on the following grounds:

- 1) the documents submitted are not full and/or noncompliant with the requirements of this Law and/or NBU regulations and/or contain false information

- 2) bank equipment, computer hardware, information systems and other information resources, premises of the branch do not meet the requirements set by the NBU
- 3) the branch has no organizational structure and/or specialists necessary for ensuring the provision of banking and other financial services in line with the NBU requirements
- 4) candidates for the positions of the chief executive officer, and/or chief accountant, and/or chief risk officer, and/or chief compliance officer, and/or chief internal auditor of the branch do not meet the fitness and propriety requirements of this Law and/or NBU regulations
- 5) management structure, including the organizational structure, and operating activity of the foreign bank, and/or a banking group to which it belongs, may have negative consequences for clients of the branch and/or can impede the NBU's exercise of effective supervision
- 6) business reputation and/or financial standing of the foreign bank, and/or business reputation and/or financial standing of owners of qualifying holding in the foreign bank are noncompliant with the requirements set by the NBU
- 7) the ownership structure of the foreign bank does not comply with the transparency requirements set by the NBU
- 8) the legal framework of the country where the foreign bank has been registered, according to the NBU's assessment conducted in line with its procedures, contains some provisions that can impede/limit cooperation between the NBU and the supervisory/controlling authorities of said country and/or deter the NBU from its exercise of supervisory functions regarding such branch of the foreign bank
- 9) banking supervision in the country where the foreign bank has been registered, taking into account information obtained by the NBU, fails to comply with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision

The NBU shall make a decision on the foreign bank's branch accreditation or refusal within three months from submittal of all required documents. The rejection shall be delivered in writing with indication of the corresponding reasons.

The foreign bank's branch shall operate in compliance with the requirements imposed by the laws of Ukraine on banks.

The NBU shall have the right to initiate the liquidation of a foreign bank branch, in the order stipulated by the laws of Ukraine.

Accreditation of the representative office of a foreign bank shall be effected by means of an appropriate entry in the State Register of Banks.

The following documents shall be submitted for accreditation of a foreign bank's representative office:

- 1) application of the foreign bank on establishment of the representative office signed by an authorized person
- 2) document confirming state registration of the foreign bank in its home country

- 3) regulation (standing orders) of the representative office approved by the authorized body of the foreign bank
- 4) Power of Attorney from the foreign bank to the representative office Head for exercising representative functions
- 5) a copy of the payment document on transfer of the fee for accreditation of the foreign bank's representative office as charged by the NBU.

The NBU may refuse to provide a foreign bank's representative office with accreditation in case of violations of the registration procedure, non-conformity of the submitted documents with the laws of Ukraine or with NBU regulations, untrue information submitted or exceeded authority in relation to the spheres of activities of the representative office.

The NBU shall make a decision on the foreign bank's representative office accreditation or refusal thereof within one month from submittal of all required documents.

The rejection shall be delivered in writing with indication of the corresponding reasons.

The NBU is entitled to annul the accreditation of any foreign bank's representative office by means of exclusion of the corresponding entry in the State Register of Banks as per the procedure established by the NBU.

The foreign bank shall inform the NBU of any amendments to the documents or information mentioned in paragraphs 4–6, 14–17 of the sixth part and paragraphs 3 and 4 of the fourteenth part of this Article. The amendments shall be supported by appropriate documents.

The official documents submitted to the NBU shall have been duly legalized pursuant to the established procedure, unless otherwise is provided by the effective international agreements, ratified by the Verkhovna Rada of Ukraine, and shall be accompanied with a notarized translation into Ukrainian.

## **Article 25. Subsidiary Banks, Branches and Representative Offices of a Ukrainian Bank in the Territory of Other Countries**

Ukrainian banks are entitled to establish (also through acquisition) subsidiary banks, branches and representative offices in the territory of other countries on the basis of the NBU permit. The same requirements are set forth for opening subsidiary banks, branches and representative offices of Ukrainian banks in the territory of other countries as those for opening branches and representative offices of the banks in the territory of Ukraine, provided the NBU has granted the permit for investments abroad in connection with the establishment of a branch or a representative office of the bank in the territory of other country.

In order to establish a subsidiary bank, branch or representative office of a Ukrainian bank abroad, the bank shall provide the NBU with a business plan and economic justification for establishing the subsidiary bank, branch or representative office of the bank abroad.

The NBU is entitled to deny the bank the permit to establish a subsidiary bank, branch or representative office of the bank in the territory of other country, when:

- 1) the bank has not met the requirements of the NBU regulations regarding the establishment of subsidiaries, branches or representative offices of banks in Ukraine

2) the banking supervision in the country in question, taking into account information obtained by the NBU, fails to comply with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision

3) the legal framework of the country, according to the NBU's assessment conducted in line with its procedures, contains some provisions that can impede/limit cooperation between the NBU and the supervisory/controlling authorities of said country and/or deter the NBU from its exercise of supervisory functions regarding such branch, representative office or subsidiary bank.

The subsidiary bank, branch or representative office of a Ukrainian bank in the territory of other country shall undergo registration in conformity with the legislation requirements of the respective country.

Within one month, the bank shall inform the NBU of opening of a subsidiary bank, branch or representative office in the territory of other country and provide copies of the appropriate documents on their registration.

Ukrainian banks shall ensure submittal of reports and data by the subsidiary or branch established in the territory of other countries to the parent bank and the NBU in accordance with the requirements of the latter regarding the consolidated supervision.

The NBU is entitled to require any Ukrainian bank to decrease the participation in its subsidiary bank capital, to close a subsidiary bank or branch established in the territory of other countries, in case the NBU does not receive the data necessary to carry out the consolidated supervision or if the supervision over the subsidiary banks or branches established in the territory of other countries by a Ukrainian bank is inefficient, in particular it does not comply with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision.

## **Chapter 5. REORGANIZATION OF A BANK**

### **Article 26. Ways of Bank Reorganization**

A bank may be reorganized by a decision of its owners.

The reorganization may be carried out by a merger, takeover, splitting, separation and transformation.

In the case of bank reorganization through transformation the provisions of law on legal entity dissolution shall not apply. In the course of the bank reorganization through transformation the creditors are not entitled to require from the bank to terminate or fulfill before the appointed time any obligation.

### **Article 27. Conditions for Bank Reorganization**

The reorganization upon the decision of bank owners shall be carried out in accordance with the laws of Ukraine, provided the prior permit has been obtained from the NBU and the bank reorganization plan has been approved by the NBU.

Should a bank be reorganized through transformation upon decision of the bank owners, the bank reorganization plan is not required.

The NBU shall determine the list of documents to be submitted in order to obtain the permit for reorganization and approval of the bank reorganization plan.



The NBU shall not give the permit for the bank reorganization in the event there are sufficient grounds to believe that the reorganization poses a threat to the interests of depositors and other creditors, and the bank, established as a result of the reorganization, and/or the bank remaining a legal entity as a result of takeover by or separation from it is likely to fail to meet the requirements established by this Law and the NBU regulations regarding economic ratios, bank governance as well as requirements to legal entities for obtaining the banking license.

The NBU shall grant the permit for the reorganization of the bank or issue a rejection within one month from the moment the application of the bank for reorganization is received.

### **Article 28. Decision on Reorganization**

The decision on reorganization of a bank, with the exception of transformation, shall include the following data on:

- 1) an agreement on reorganization in case of a merger or takeover
- 2) the appointment of commission members to carry out the reorganization
- 3) the appointment of members of the Revision Commission to take an inventory and review valuables in the books of the bank (banks)
- 4) the appointment of the auditor
- 5) the reorganization schedule
- 6) the composition of the bank's supervisory board and management board after the reorganization.

The reorganization shall begin after the NBU approves the reorganization plan, which, apart from all other necessary measures, shall provide for submitting to the NBU the appropriate documents necessary for approval of the new bank's charter or amendments to the charter of the existing bank.

### **Article 29. Agreement on Merger or Takeover**

The agreement on merger or takeover shall be concluded in writing by the banks being reorganized through the merger or takeover.

The agreement on merger or takeover shall contain provisions that regulate the issues set forth in Article 28 of the present Law.

The agreement on merger or takeover shall enter into force the moment it has been approved by a 2/3 majority of shareholders (participants) at the general meeting of each of the banks.

## **Section III. CAPITAL, GOVERNANCE, AND REQUIREMENTS TO ACTIVITIES OF BANKS**

### **Chapter 6. CAPITAL, FUNDS, AND RESERVES OF A BANK**

#### **Article 30. Bank Regulatory Capital Composition**

The bank regulatory capital shall include:

- 1) core capital

2) additional capital.

The core capital of any bank shall include the authorized capital and disclosed reserves that are formed or increased at the expense of the retained profit, share premiums and additional contributions of shareholders to the capital, the general reserve fund created against general or unspecified business risk, except for the losses in the current year and intangible assets. The disclosed reserves also include other funds of the same quality, which shall correspond to the following criteria:

- 1) Payments to the funds shall be made from the profits after taxation or from profits before taxation, adjusted for all potential tax obligations.
- 2) The funds and cash inflow and outflow shall be separately disclosed in the published statements of the bank.
- 3) The bank shall have the funds available to cover losses to be instantly used in unlimited amounts if losses are incurred.
- 4) Losses may not be covered directly from the funds. They shall be entered to the profit and loss account.

If approved by the NBU, the additional capital may include:

- 1) undisclosed reserves (apart from the fact that such reserves are not shown in the published balance sheet of the bank, they shall be of the same quality and nature as the disclosed capital reserve)
- 2) revaluation reserves (fixed assets and unrealized value of the “hidden” revaluation reserves resulting from long-term holding of the securities recorded in the balance sheet at the historical cost of their acquisition)
- 3) hybrid (debt/capital) capital instruments that shall meet the following criteria:
  - they are unsecured, subordinated and fully paid
  - they may not be repaid on the initiative of the owner
  - they may freely participate in the cover of losses without demanding that the bank terminates trading transactions
  - they allow delay in servicing obligations as to the interest payments in case the level of profitability does not allow performing such payments
- 4) subordinated debt (ordinary unsecured by the bank debt capital instruments, which under contract conditions may not be withdrawn from the bank earlier than after a 5 year period, and in case of bankruptcy or liquidation shall be returned to investors after reimbursement of claims of all other creditors). In such a case, the amount of subordinated debt included into capital shall annually decrease by 20% of its initial value within the last 5 years of the contract.

In case the subordinated debt has been in a foreign currency of the first group of the Foreign Currency Classifier of the NBU, it shall be included in calculation of capital at the official exchange rate of the NBU as at the reporting date.

The NBU has the right to determine, in the form of its resolutions, other components of the regulatory capital as well as conditions and the procedure for its formation.

The additional capital may not exceed 100% of the core capital.

### **Article 31. Minimum Size of the Authorized Capital**

The minimum size of the authorized capital at the moment of state registration of the legal entity intending to engage in banking and the minimum size of the authorized capital of the bank shall not be less than UAH 200 million.

The National Bank of Ukraine shall have the right to establish for some banks and legal entities intending to engage in banking, depending on their specialization, a differentiated minimum size of the authorized capital, and this size shall not be less than the amount specified in this Article.

### **Article 32. Procedure for Bank's Authorized Capital Formation and Increase**

The authorized capital of a bank shall be formed in accordance with the requirements of the present Law, the legislation of Ukraine and foundation documents of the bank.

The formation and increase of the authorized capital may be carried out through money contributions, except the cases envisaged by the Law of Ukraine *On the State Budget of Ukraine* for the relevant year, Law of Ukraine *On Priority Measures to Avoid Negative Consequences of the Financial Crisis and Amendments to Certain Laws of Ukraine*, and Law of Ukraine *On Simplifying Reorganization and Capitalization Procedures for Banks* during its effect period. The money contributions for the formation and increase of the authorized capital of a bank by Ukrainian residents shall be made in the hryvnia, whereas nonresidents may pay the contributions in a foreign fully convertible currency or in the hryvnia. The bank's losses shall not be an obstacle for an increase of the authorized capital.

The authorized capital of a bank shall not be formed from unverified sources, nor from the funds forbidden by laws for use in the authorized capital.

The legal entity intending to engage itself in banking, before it is granted the banking license, is entitled to spend the funds contributed by the founder(s) thereof in order to form the authorized capital thereof only with the purpose of preparing itself for performing the banking operations.

A bank shall not have the right to reduce the size of the regulatory capital lower than the established minimum without approval of the NBU. This requirement shall not be applied to a newly established bank during one year from the date of receipt of the banking license by the bank in question.

It is prohibited to use budget funds for the bank authorized capital formation if these funds are earmarked for other purposes.

In the case of decrease of total amount of deposits in the banking system by five or more percent during the term up to six calendar months, the NBU by its decision introduces (cancels) simplified procedure for registration of the issue of shares, the NBU approval of the amendments to the bank charter, state registration of the amendments to the bank charter. According to the simplified procedure:

- The date of submittal of the decision on bank's capitalization, amendments to the bank's charter to the National Securities and Stock Market Commission shall be deemed the date of issue registration.
- The date of submittal of amendments to the bank's charter for approval to the NBU and for registration to the State Registrar shall be deemed the date of their approval by the NBU and the date of registration by the State Registrar respectively.

- The date of submittal of the documents for registration of share issue of the bank shall be deemed the date of issue registration.

The date of submittal of respective documents to the NBU, the State Registrar, and the National Securities and Stock Market Commission shall be determined in accordance with an incoming stamp of the respective public authority (registration index).

The Antimonopoly Committee of Ukraine, in cases specified in part seven of the Article, shall issue a conclusion and/or permit for concentration within five business days since the date of submittal of the respective documents by the bank.

### **Article 33. Bank Shares and Stakes**

Banks may issue their own shares in compliance with the Ukrainian legislation on companies (economic partnerships) as well as securities with taking into account the peculiarities defined by the present Law.

Banks are not allowed to issue the shares to bearer.

Existence of bank losses is not an obstacle for an increase of the bank's authorized capital.

Banks shall have the right to purchase their own shares or stakes with further written notification to the NBU of the deals made, which shall be sent within 5 business days after the date of the deal. The banks may not purchase their own shares if this can lead to a decrease in the regulatory capital to a level lower than the required minimum.

The bank shall, 15 calendar days prior to the deal, notify the NBU in writing of its intention to acquire 10 and more percent of own shares or stock of the total issue. The NBU shall have the right to prohibit such purchase of bank's own shares or stock if this can result in a deterioration of the bank's financial standing.

The bank shall issue its shares according to the procedure established by the Law of Ukraine *On Capital Markets and Regulated Markets*. The Bank shall be permitted to act as an intermediary for the purchase and sale of its own shares or stakes.

### **Article 34. Qualifying Holding and a Bank's Ownership Structure**

An entity intending to acquire a qualifying holding in a bank or to increase it so that this entity could, directly and/or indirectly, alone or jointly with other entities, hold 10, 25, 50, 75 or more percent of the bank's authorized capital or voting shares in the bank's authorized capital and/or could influence the bank's management or activities in a significant manner, regardless of whether this entity is the formal owner of the bank, shall be required to notify both the bank in question and the NBU of its intentions and concurrently submit to the NBU the complete package of documents defined by this Law and NBU regulations to obtain approval of the acquisition or increase of a qualifying holding in the bank.

An acquisition or increase in a qualifying holding in a bank without the NBU's approval shall be inadmissible, except for cases specified in NBU regulations when a post factum approval of the acquisition or increase is allowed.

In the cases specified by the NBU, an entity shall address the NBU requesting the ex post facto approval of acquisition or increase in a qualifying holding in a bank within the terms and in accordance with the procedure set by the NBU. Before adopting a decision, the NBU may temporarily

prohibit such an entity to use its voting rights in respect of the relevant shares in the bank under [Article 73](#) of this Law.

If the bank mentioned in parts one and three of this Article holds a license as a capital market professional, the NBU shall inform the National Securities and Stock Market Commission about the mentioned entities intending to acquire or increase a qualifying holding in said bank or address the NBU requesting an approval of the acquired or increased qualifying holding in the bank after its actual acquisition or increase.

An entity intending to transfer its qualifying holding in a bank to any other entity or to decrease the holding so that its share in the bank's authorized capital or its voting right would be lower than the levels envisaged in part one of this Article, or to transfer control over the bank to another entity shall be required to notify thereof both the bank in question and the NBU according to the procedure set by the NBU.

The NBU has the right to prohibit an owner of a qualifying holding in a bank for a term of up to six months to alienate the bank shares in their possession and/or the shares in the authorized capital (portfolio of shares) of a legal entity through which said entity owns the qualifying holding in the bank, if a corrective measure has been applied to the bank in the form of declaring it a problem bank or as limitation, suspension or termination of certain types of bank operations, including transactions involving the bank's related parties.

The ownership structure of the bank shall be in line with the NBU transparency requirements. The bank shall be obliged to annually submit to the NBU the information about its ownership structure, as well as inform the NBU of all changes in the ownership structure of the bank under the procedure and within the timeframe established by the NBU. Owners of a qualifying holding in the bank and key participants in the ownership structure of the bank shall be obliged within 10 business days from the date of the relevant changes to provide the bank with the information and documents necessary to obtain information about the bank's ownership structure.

The bank shall be obliged to notify the NBU about the facts of acquisition or increase of a qualifying holding in this bank, as well as about the decrease of a qualifying holding of an entity in this bank to the extent that the participation of such entity in this bank will be below the levels specified in part one of this Article, within three business days from the day it became known to the bank.

The bank shall be obliged to disclose information about its ownership structure and all changes to it in the scope and under the procedure determined by the NBU.

Owner of a qualifying holding in the bank shall be obliged to inform the NBU of all changes in the information that it provides under this Law in the scope and under the procedure established by the NBU.

The NBU shall have the right to establish whether there is a significant or decisive influence on the management or activities of a legal entity, including a bank, to recognize an entity as an owner of a qualifying holding in the bank under the procedure established by the NBU. Signs of the presence of significant or decisive influence on the management or activity of a legal entity, including a bank, are determined by NBU regulations.

The NBU, in the event of noncompliance of the business reputation and/or financial/property status of the owner of a qualifying holding in the bank with this Law or NBU regulations, and/or if the NBU has reasons to believe that ownership by said entity of a qualifying holding in the bank may create significant threats to the proper management of the bank, interests of its depositors and other lenders of the bank and/or adversely affect its financial position, has the right to temporarily prohibit such owner of qualifying holding to use their voting rights and/or require the alienation of the respective shares of the bank. The NBU shall post the respective decision on its official website no later than the next business day from the day it is adopted.

Acquiring qualifying holding in a bank should not be carried out at the expense of unverified sources, nor at the expense of funds or property, the use of which for the contribution to the authorized capital is prohibited by law.

### **Article 34<sup>1</sup>. Procedure for Approval of Acquisition or Increase in a Qualifying Holding in a Bank**

An entity who intends to acquire a qualifying holding in a bank or increase it while exceeding the limits specified in **part one** of Article 34 of this Law (hereinafter referred to as the applicant), shall submit to the NBU the following:

1) notice of intent to acquire or increase a qualifying holding in a bank;

2) documents and information specified by the NBU needed to identify:

the applicant and all entities through whom the indirect ownership of a qualifying holding in the bank will be carried out

all legal entities in which the applicant and entities who will hold a qualifying holding in the bank are owners of a qualifying holding and/or managers

associated persons of each individual who will have a qualifying holding in the bank.

3) documents and information specified by the NBU for the conformity assessment of business reputation of the applicant and all entities, through which the indirect ownership of a qualifying holding in a bank will be carried out, to the requirements established by the NBU

4) documents specified by the NBU that prove the compliance of financial and property status of the applicant and all entities, through which the indirect ownership and/or control of a qualifying holding in the bank will be carried out, including the availability of own funds for acquiring or increasing the qualifying holding in the bank and their sources, with the NBU requirements

5) a diagram of the bank's ownership structure, taking into account the acquisition or increase of a qualifying holding in the bank

6) a conclusion (preliminary conclusion) made by the Antimonopoly Committee of Ukraine as regards concentration and/or permission received from the Antimonopoly Committee of Ukraine for concentration, as provided by the Ukrainian laws

7) a copy of the agreement or other document (or its draft), on the basis of which a qualifying holding in the bank will be acquired or increased

8) the business plan of the bank for three years drawn up in accordance with the NBU requirements (submitted if the entity, independently or jointly with other entities, acquires control over the bank as a result of acquisition or increase of a qualifying holding).

A foreign legal entity that intends to acquire or increase a qualifying holding in a bank shall be obliged to additionally provide the NBU with the following documents:

1) a copy of the decision of the authorized management body of the foreign legal entity to participate in a bank in Ukraine

2) a written permit for the participation of the foreign legal entity in a bank in Ukraine issued by the authorized controlling body of the country, in which the head office of the foreign legal entity is registered, if the legislation of said country requires to obtain a specified permit, or written assurances of the foreign legal entity as to absence of any legal requirements in the respective country to obtain such a permit.

Foreign individuals who intend to acquire or increase a qualifying holding in a bank shall additionally submit to the NBU a written permit to participate in a bank of Ukraine issued by the authorized

controlling body of the country, in which they reside permanently, if the legislation of said country requires to obtain such a permit or written assurances as to absence of any legal requirements in the respective country to obtain such a permit.

Entities intending to acquire or increase a qualifying holding in a bank shall be obliged to submit to the NBU the documents specified by NBU regulations to prove that their financial/property status and business reputation comply with the NBU requirements.

The NBU shall approve an acquisition or increase of a qualifying holding by a foreign legal entity and a foreign individual under the following conditions:

- 1) the country, in which the foreign entity is registered (or has a permanent residence for an individual), properly ensures the implementation of international standards in the area of prevention and counteraction to the legalization (laundering) of the proceeds from crime, terrorism financing, and financing proliferation of weapons of mass destruction
- 2) banking supervision in the country, where the foreign bank acquiring a qualifying holding is registered, taking into account the information obtained by the NBU, generally complies with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision, including the effectiveness of supervision on the consolidated basis
- 3) the legal framework of the country, in which the foreign entity/individual is registered/has permanent residence, according to the NBU's assessment conducted in line with its procedures, contains no provisions that can impede/limit cooperation between the NBU and the supervisory/controlling authorities of said country and/or deter the NBU from its exercise of supervisory functions.

The NBU shall consider the documents submitted for approval of an acquisition or increase of a qualifying holding in a bank and shall make a decision based on the documents within two months from the date of receipt of the complete set of relevant documents in accordance with the NBU procedure (except for the consideration of the set of documents submitted by strategic investors applying for participation in the competition under the [Law of Ukraine On Specifics of Sales of Stakes Owned by the State in the Authorized Capital of Banks the State Participated in](#)). The requirements for documents submitted to the NBU are determined by the NBU. The NBU, based on the results of consideration of the documents, shall make a decision on approval or prohibition of the acquisition or increase of a qualifying holding in a bank.

To obtain an ex post facto approval of an acquisition or increase in a qualifying holding in a bank an entity shall submit to the NBU the documents listed in this Article. The NBU, based on the results of consideration of said documents, shall make a decision on approval or refusal to approve the acquired or increased qualifying holding in a bank.

The NBU shall have the right to prohibit an entity from acquiring or increasing a qualifying holding in a bank or refuse to approve the acquired/increased qualifying holding in a bank after its actual acquisition or increase, if:

- 1) the entity submitted an incomplete set of documents, the documents contain inaccurate information or do not comply with the Ukrainian laws and/or NBU regulations, the entity failed to disclose to the NBU (hid from the NBU) any information that is essential for making a decision on approval of an acquisition or increase of qualifying holding in a bank
- 2) the business reputation of an individual or for a legal entity – also that of its management board and/or supervisory board members, of at least one owner of a qualifying holding in the legal entity and/or at least one person through which indirect ownership of the qualifying holding in the bank is likely to be exercised, is noncompliant with the requirements set forth by the NBU

- 3) the financial status of a legal entity and/or the property status of an individual or at least one person through which the indirect ownership of a qualifying holding in the bank is likely to be exercised, does not comply with the NBU requirements
- 4) the entity does not have enough of own funds for acquiring or increasing a qualifying holding in the bank or failed to prove the compliance of the source of such funds with the NBU requirements
- 5) the acquisition or increase by an entity of a qualifying holding in a bank would threaten the interests of depositors and other creditors of the bank or would be in conflict with the antitrust laws of Ukraine, or could lead to deterioration of the financial condition of the bank
- 6) the ownership structure of the legal entity and/or the ownership structure of the bank after the acquisition or increase of a qualifying holding does not comply/will not comply with the transparency requirements established by the NBU
- 7) the acquisition or increase by an entity of a qualifying holding in the bank may adversely affect the proper management of the bank
- 8) the acquisition or increase by an entity of a qualifying holding in the bank may hinder the effective banking supervision by the NBU
- 9) at least one of the conditions specified in paragraph five of this Article was not fulfilled.

The NBU shall notify the applicant in writing (in paper or electronic form observing the requirements of the Ukrainian legislation) about the decision taken after considering the submitted documents, no later than the day following the day the decision is made, and provides (sends) a copy of said decision. If the decision was to prohibit an acquisition or increase of a qualifying holding, or the decision was to refuse to approve an acquired/increased qualifying holding in the bank after its actual acquisition or increase, the grounds for making such decisions shall be stated.

If the NBU fails to inform the applicant on the prohibition to acquire or increase a qualifying holding in the bank, or the refusal to approve an acquired/increased qualifying holding in the bank within the time period specified in this Article, such acquisition or increase shall be considered as approved.

An entity, which obtained the NBU's approval of the acquisition or increase of a qualifying holding in the bank, has the right to implement its intention within six months from the date of receipt of the approval. This term may be extended by the NBU upon a reasoned request from such entity, but not more than for six months. In the event of expiration of the term for implementation of the intention to acquire or increase a qualifying holding in a bank, the entity shall be obliged to obtain another approval of such acquisition or increase in the manner established by this Article.

The entity shall be obliged to inform the bank about the NBU's approval of the acquisition or increase of a qualifying holding in the bank and to provide the bank with information about its ownership structure and the size of the qualifying holding in the bank.

The NBU shall have the right to cancel the decision on approval of the acquisition or increase of a qualifying holding and require the alienation of the relevant shares (stakes) of the bank, if the documents submitted for said approval are found to contain false information that had or could have an impact on the NBU's decision on approval of the acquisition or increase of a qualifying holding in the bank.

The NBU shall publish the information on the decisions to approve or prohibit the acquisition or increase of a qualifying holding in banks, the approval of the acquired/increased qualifying holding or the refusal to approve the acquired/increased qualifying holding in the bank on the NBU official website no later than the next business day from the day of their adoption.



## **Article 34<sup>2</sup>. Consequences of Violations of the Procedure for Acquisition or Increase in a Qualifying Holding in a Bank**

A transaction that resulted in an acquisition or increase of a qualifying holding in a bank by an entity without the NBU's consent, including in spite of the NBU's prohibition, except for the cases where the post factum approval of the acquired or increased qualifying holding is allowed under **part two** of Article 34 of this Law, shall be null and void. The NBU shall inform in writing the bank, the parties to such transaction, the depository institutions serving the securities accounts of the parties to such transaction, and the Central Securities Depository that the transaction is deemed null and void, and post the relevant information on the NBU's official website no later than on the next business day after becoming aware of the transaction.

If the entity did not apply to the NBU to obtain a post factum approval of an acquisition or increase of a qualifying holding in a bank in the cases and within the time periods specified by the NBU, or the NBU refused to provide said entity with the approval of the acquired or increased qualifying holding in the bank, the NBU shall have the right to temporarily prohibit such an owner of a qualifying holding to use the voting right and/or require the alienation of the relevant shares (stakes) of the bank.

A transaction committed by an entity under a prohibition from the NBU to alienate any shares (stakes) belonging to this entity and/or a share in the authorized capital (portfolio of shares) of the legal entity through which said entity owns a qualifying holding in the bank, shall be null and void. The NBU shall inform in writing the bank, the parties to such transaction, the depository institutions serving the securities accounts of the parties to such transaction, and the Central Securities Depository that the transaction is deemed null and void, and post the relevant information on the NBU's official website no later than on the next business day after becoming aware of the transaction.

## **Article 35. Capital Adequacy and Leverage Ratio**

The bank and each owner of a qualifying holding in the bank shall maintain, on an ongoing basis, adequate capital level for simultaneous compliance with:

- 1) normative values of the regulatory capital adequacy ratio and the core capital adequacy ratio established by the NBU
- 2) increased values of the regulatory capital adequacy ratio and the core capital adequacy ratio established by the NBU according to part ten of Article 67 of this Law
- 3) combined capital buffer.

The NBU, taking into account the needs to ensure stability of the banking system as well as compliance with the internationally accepted principles and standards, shall determine the minimum size of the regulatory capital of the bank, minimum value and calculation procedure for the regulatory capital adequacy ratio, the core capital adequacy ratio.

The NBU shall have the right to set the leverage ratio, determine its value and calculation procedure.

The bank shall be obligated to comply, on an ongoing basis, with the leverage ratio set by the NBU.

The bank shall be prohibited from paying dividends or distributing equity capital in any way, if such payment or distribution results in the decrease of bank capital below the level necessary for ensuring the requirements established by this Article.

### **Article 35<sup>1</sup>. Capital Buffers. Combined Capital Buffer**

The NBU shall establish requirements for banks regarding formation, values and calculation procedure for the following capital buffers:

conservation buffer

countercyclical buffer

systemic importance buffer for systemically important banks.

The NBU shall also have the right to establish requirements for banks regarding formation, values and calculation procedure for the systemic risk buffer.

Banks shall be obligated to comply with capital buffer requirements established by the NBU.

The NBU establishes requirements for banks regarding compliance with the combined capital buffer and determines its calculation procedure.

The NBU shall inform the banks about the established requirements regarding formation of capital buffers and their values in accordance with the procedure established by the NBU.

### **Article 35<sup>2</sup> Liquidity Adequacy**

The bank shall be obligated to maintain, on an ongoing basis, adequate liquidity level to ensure timely and full implementation of its commitments as they fall due and simultaneous compliance with the following:

- 1) minimum values of liquidity ratios established by the NBU
- 2) increased values of liquidity ratios established by the NBU according to part ten of Article 67 of this Law
- 3) internal liquidity adequacy level.

The NBU shall determine requirements for assessment of internal liquidity adequacy by the bank.

### **Article 36. Reserves and Other Funds of the Bank**

Banks shall form a reserve fund to cover possible unforeseen losses in all asset items and off-balance sheet liabilities.

The allocations to the reserve fund shall not be less than 5% of the bank's profit until the reserve fund reaches 25% of the bank's regulatory capital.

Should the activity of the bank pose a threat to interests of depositors and other creditors of the bank, the NBU has the right to require an increase in reserves and annual contributions thereto.

Banks shall form other funds in conformity with the NBU regulations.

## **Chapter 7. BANK MANAGEMENT**

### **Article 37. Bank Management and Controlling Bodies**

The supreme management body of the bank shall be the general meeting of the participants in the bank.

The executive body of the bank performing the day-to-day management of the bank shall be the bank's board.

The bank shall be obliged to establish a supervisory board to control the executive body, protect the depositors, other creditors and the bank's participants. The supervisory board shall not perform the day-to-day management of the bank.

The members of the bank's supervisory board and the board shall be responsible for the bank's activity within their competence.

The bank's supervisory board and the board shall possess the collective suitability that corresponds to the bank's size, complexity, volumes, types, and nature of its operations, its organizational structure and risk profile, and takes into account the specifics of a systemically important bank (if the bank has such a status) and/or the activity of the banking group of which the bank is a part.

The NBU, in line with the procedure established by it, shall determine whether the bank's supervisory board and the board possess the collective suitability and assess how they ensure the effective management and control over the bank's operation, taking into account the bank's size, complexity, volumes, types, and nature of its operations, its organizational structure and risk profile, and the specifics of a systemically important bank (if the bank has such a status) and/or the activity of the banking group of which the bank is a part. The NBU shall determine criteria for assessing the collective suitability of the bank's supervisory board and the board and ensuring their effective management and control over the bank's activities.

The NBU shall have the right to provide the general meeting of the participants in the bank and/or the bank's supervisory board with written recommendations to increase the efficiency of the bank's management and control over its activities if, based on the assessment carried out by the NBU, the latter has reasons to believe that said bodies, within their mandate, fail to provide effective management and control over the bank's activities.

The general meeting of the participants in the bank and/or the bank's supervisory board shall be obliged, within two month from the day of receipt of the NBU's written recommendations to increase the efficiency of the bank's management and control over its activities by the bank's supervisory board and the board, to inform the NBU on the measures that have been taken or will be taken to implement said recommendations.

The NBU shall have the right to demand to change the composition of the bank's supervisory board and/or the board in case it has determined that the collective suitability of the bank's supervisory board or the board does not meet the criteria established by the NBU or in the event that the general meeting of the participants in the bank and/or the bank's supervisory board failed to take measures to improve operation of the bank's supervisory board or the board with the aim of ensuring by them of the effective management and control over the bank's activities.

The bank, at the NBU's request, shall be obliged to take measures to change the composition of the bank's supervisory board and/or the board.

## **Article 38. General Meeting of Participants in the Bank**

The general meeting of the participants in the bank shall have the exclusive authority to take decisions on the matters that, in accordance with law, fall within the exclusive authority of a general meeting of shareholders of a joint stock company. In addition, the bank's charter may include other issues in the competence of the general meeting of participants in the bank, except for those that belong to the exclusive competence of the supervisory board in accordance with law or bank's charter.

If the composition of the bank's supervisory board fails to meet the minimum required by Ukrainian laws, the bank's board shall have the right to make a decision on presenting any issue belonging, in accordance with the law or charter, to the exclusive competence of the bank's supervisory board for the consideration of the general meeting of the bank's shareholders. The general meeting of the bank's shareholders shall have the right to consider such issue and make a decision.

The NBU has the right to request the convocation of the extraordinary general meeting of bank's shareholders and bringing up the issue for consideration of the highest management body of a state-owned bank.

Any decision of the general meeting of participants in the bank/decision of a sole participant in the bank shall be made void if it has been taken as follows:

1) with making use of the voting rights by persons to whom the NBU has temporarily denied the right to vote at the general meeting of the participants in the bank and/or required to alienate shares (stocks) of the bank

2) with making use of the voting rights with respect to the shares acquired as the result of a transaction being void.

## **Article 39. Supervisory Board**

Supervisory board may include independent members (hereinafter referred to as independent directors), bank's participants and their representatives. Supervisory board members are elected through cumulative voting except when the bank has one shareholder.

The number of supervisory board members is defined by the bank's charter, but may not be less than five.

Members of the supervisory board may not be the members of the board, as well as hold other positions in the bank on the terms of employment agreements (contracts), or provide services to the bank based on civil law contracts.

A member of the bank's supervisory board may not be a manager, official, and/or member of the bank's board or other management body of other bank registered in Ukraine, except in cases provided for in Ukrainian laws.

The independent directors shall account for at least one-third of the composition of the supervisory board, with their number being not less than three persons.

The independent directors shall comply with the requirements set by law for the independency of members of the supervisory board of a joint stock company. The NBU shall have the right to set additional requirements to the independent directors of banks. The bank shall be obliged to ensure compliance of independent directors with the requirements of this Law and other Ukrainian laws and NBU regulations and ensure replacement of said independent directors in case of incompliance.

The following functions are within exclusive authority of the supervisory board:

- 1) approval of the bank's strategy, business plan, business recovery plans, emergency funding, and business continuity, and control over their implementation
- 2) ensuring organization of effective corporate governance in line with the principles (code) of corporate governance approved by the general meeting of participants in the bank
- 3) approval and control of the bank's budget execution, including financing of risk management, compliance, and internal audit units
- 4) approval and control of implementation of the bank's strategy and problem assets management plan
- 5) ensuring functioning and control of effectiveness of the comprehensive and adequate internal control system of the bank, including risk management and internal audit
- 6) approval and control of compliance with the strategies and policies on risk management, Risk Appetite Statement, list of limits on the bank's risks
- 7) approval and control of compliance with the code of conduct (ethics), policy for preventing, identifying, and managing conflicts of interest in the bank
- 8) implementation and control of functioning of a mechanism for the confidential reporting of unacceptable behavior in a bank and for response to such notifications
- 9) definition of sources of capitalization and other types of financing of the bank
- 10) definition of the bank's credit policy
- 11) approval of the organizational structure of the bank, including risk management, compliance, and internal audit units
- 12) approval of the internal regulations on the bank's board, supervisory board committees, risk management units, compliance units, internal audit units, and other units directly subordinated to the bank's supervisory board, which, in particular, should include the procedure for submitting reports to the bank's supervisory board
- 13) appointment and termination of powers of the chairman and members of the bank's board, appointment and dismissal of the chief risk officer, chief compliance officer, and head of the internal audit function
- 14) control over activities of the bank's board, risk management unit, compliance unit, and internal audit unit, and making recommendations on their improvement
- 15) carrying out annual assessment of the bank's board activities in general and that of activities of every board's member in particular, as well as of risk management units, compliance units, and internal audit units; assessment of compliance of the bank's board members, chief risk officer, chief compliance officer, and head of the internal audit function with qualification requirements; assessment of the collective suitability of the bank's board to the bank's size, complexity, scope, types, and nature of the bank's transactions, organizational structure and risk profile of the bank including specifics of the bank's activities being systemically important (if applicable) and/or activities of the banking group of which the bank is a part; taking steps to improve performance mechanisms of the bank's board and risk management, compliance, and internal audit units based on the results of such assessment
- 16) definition of working procedures and plans of the internal audit and control over its activity

- 17) designation of an audit company to perform external audit, including to perform annual audit of the financial statements, approval of the terms and conditions of the agreement entered into with such audit company, setting the amount of payment for services
- 18) analysis of the bank's external audit report and preparation of recommendations to the general meeting of participants in the bank to make a decision on the external auditor's report
- 19) control over elimination of deficiencies identified by the NBU and other public authorities performing within their competence the bank's activity, bank's internal audit and the audit company, basing on the external audit results
- 20) adopting the decisions on establishment, reorganization and liquidation of legal entities, establishment of the bank's branches and representative offices on the territory of other countries, approving their charters and regulations, and making decisions on the bank's participation in legal entities in the amount of 10 percent and more of the authorized capital
- 21) approval of terms and conditions of labor agreements (contracts) entered into with the members of bank's board, the head and employees of internal audit, chief risk officer, and chief compliance officer; setting the amount of their compensation
- 22) control over timely disclosure (publication) by the bank of accurate information about its activities in accordance with the Ukrainian laws, including NBU regulations
- 23) approval of and control over the procedure for conducting transactions with the bank's related parties which, in particular, shall prescribe requirements to detection of and control over transactions with the bank's related parties
- 24) determination of a remuneration policy of the bank to meet the requirements set by the NBU and control over its implementation
- 25) carrying out annual assessment of the bank's supervisory board activities in general and that of activities of every supervisory board's member in particular, as well as of the supervisory board's committees; assessment of the collective suitability of the bank's supervisory board to the bank's size, complexity, scope, types, and nature of the bank's transactions, organizational structure and risk profile of the bank including specifics of the bank's activities being systemically important (if applicable) and/or activities of the banking group of which the bank is a part; taking steps to improve performance mechanisms of the bank's supervisory board based on the results of such assessment
- 26) exercise of other powers attributed to the competence of a supervisory board pursuant to the [Law of Ukraine On Joint Stock Companies](#) or the bank's charter.

The chairperson and the members of the bank's supervisory board, when performing their functional duties, shall have the right to familiarize themselves with the documents and information on activities of the bank, including all the bank's units irrespective of the country of their location, and the bank's affiliates; the right to access to the banking transactions automation system, and the right to receive information from the bank's managers and employees on the issues related to performance of their functional duties.

The supervisory board of the systemically important bank shall establish the following permanent committees:

- the audit committee
- the risk management committee
- the committee on remuneration.

Heads of the audit committee, risk management committee, and committee on remuneration of a systemically important bank shall be independent directors.

The supervisory board of a systemically important bank shall have the right to establish other committees.

The supervisory board of the bank not recognized as systemically important shall have the right to establish permanent or provisional committees. At least one independent director shall be a member of the audit committee and committee on remuneration (if any). An independent director shall be appointed as the head of the risk management committee (if it was established).

The chairperson of the bank's supervisory board may not be appointed as a head of the audit committee and risk management committee.

The bank's supervisory board shall, in the order prescribed by it, take steps to prevent and manage conflicts of interest in a bank.

The supervisory board shall be obliged to ensure the efficient relations with the NBU.

The NBU has the right to require termination of powers of a member of the supervisory board if they perform their functions improperly.

The NBU has the right to request the convocation of the extraordinary meeting of the supervisory board.

The bank shall be obliged to annually, not later than on 30 April and at the request of the NBU, provide the NBU, within its authority to perform the banking supervision, with information about the issues discussed at the meeting of the bank's supervisory board, including the issues related to implementing the bank's strategy, business plan, business model, strategy and operational plan to manage troubled assets, and about decisions made on them, as well as a list of the members of the bank's supervisory board that were present at the meeting (meetings) of the bank's supervisory board.

The bank's charter may include other issues within the competence of the supervisory board.

#### **Article 40. Bank's Board**

The chairperson of the board shall be at the head of the board of the bank, he/she manages the board's activity and has a right to represent the bank without commission.

The deputies of the board chairperson shall be members of the board due to their official capacity.

The chairperson of the board shall bear personal responsibility for the bank's activity.

The chairperson of the board has a right to participate in the meeting of the supervisory board with the right of the deliberative vote. The chairperson of the board may not chair the structural units of the bank.

The board shall resolve other issues related to the management of the daily operations of the bank, except matters within the exclusive competence of the general meeting of the participants in the bank and the supervisory board.

The bank's board shall be obliged to establish the following permanent committees:

- 1) credit committee
- 2) assets and liabilities management committee.

The bank's board shall have the right to establish other committees.

The same person may not simultaneously perform the functions of the chairperson of the credit committee and chief risk officer or chief compliance officer.

The bank's board shall be obliged to inform the bank's supervisory board on any violations of laws and the bank's internal regulations (if such violations fall within the competence of the bank's supervisory board, as prescribed by law) that were found in the bank's activities, on the level of risks arising when performing the bank's activities, and late or improper fulfillment by the bank's related parties of their obligations to the bank.

#### **Article 41. Excluded**

#### **Article 42. Bank Managers**

Managers of the bank shall be the chairperson, his/her deputies and members of the supervisory board, the chairperson, his/her deputies and members of the board, chief accountant.

Bank managers shall comply with the eligibility requirements. The eligibility requirements are the fitness and propriety requirements. For managers of a state-owned bank that also includes the requirements set forth in Article 7 of this Law and for an independent director of a bank – the requirements regarding independence.

Bank managers shall have irreproachable business reputation.

Professional fitness of a bank manager is defined as a set of knowledge, professional and managerial experience required to properly fulfil his/her duties as a bank manager depending also on the bank's business plan and strategy as well as on the line of business and area of responsibility of the respective bank manager.

Bank managers shall have a higher education.

Chairperson of the board shall have at least five years of experience in banking and/or financial sector, including at least 3 years in a managerial position.

Members of the board shall have a total of at least three years of experience in banking and/or financial sector.

At least half of the supervisory board members, including the chairperson, shall have experience in banking and/or financial sector of at least three years.

Chief accountant of a bank and his/her deputies shall have a total of at least five years of professional experience in banking and/or financial sector for the chief accountant and two years for his/her deputies.

The eligibility requirements for bank managers are established by the NBU.

The NBU approves bank managers (candidates) for the bank manager positions according to the procedure set by the NBU. The NBU denies approval of a bank manager (candidate), if he/she fails to comply with the eligibility requirements or fails to prove its compliance with the eligibility requirements to the NBU.

The chairperson of the board, the chief accountant, and chairperson and members of the supervisory board shall take office after the NBU approval. If, after the deadline for consideration of the full set of documents, the NBU has not informed the bank about the decision on approval of a candidate for



the position of the chairperson or the member of the supervisory board, the candidate shall be deemed approved.

Bank shall submit documents for approval of bank managers to the NBU within one month since the day of their appointment (election) to the positions. Bank has the right to ask for the NBU's approval of the candidates for the managerial positions before their appointment (election) to the positions.

Bank managers shall be in compliance with the eligibility requirements during their tenure in the respective positions. Bank shall be responsible for checking if its managers are in compliance with the eligibility requirements and ensure an ongoing control of such compliance.

The NBU has the right to demand the termination of any bank manager's powers in the event of his/her failure to comply with the eligibility requirements and/or bank manager's failure to properly fulfil his/her duties that led to a breach of applicable legal requirements uncovered in the process of banking supervision and in accordance with the procedure defined herein. Bank, at the NBU's demand, shall take steps to terminate the powers of said bank manager and elect/appoint another person for the respective position under the laws of Ukraine.

The bank manager, whose powers were terminated due to the NBU's refusal to approve said person, shall be obliged to refrain from taking actions, making decisions, and, from the moment of receiving the respective NBU demand in writing, stop exercising the professional duties vested upon this manager.

The chairperson, members of the board, and chief accountant of a bank shall be prohibited to hold positions in other legal entities (except for a controller of a bank, legal entities that have a joint controller with a bank, banking unions and associations).

The NBU has the right to receive free of charge from public authorities, local government bodies and other legal entities the information necessary to determine the fitness and propriety of bank managers (candidates). Within 10 business days from the date of receipt of the NBU's request, the public authorities and other persons shall furnish the NBU with the respective information.

Bank managers shall be obliged to act in the interests of the bank, to comply with the laws, charter and other documents of the bank.

Bank managers are responsible to the bank for damages caused to the bank by their actions (or inaction) in accordance with the laws. If the responsibility under this Article is borne by several persons, their responsibility to the bank is united.

Bank managers shall prevent the conflict of interests in the bank and aid in their resolution. Bank managers shall refrain from taking actions and/or making decisions if such may lead to a conflict of interests and/or hinder the proper exercise of their functions in the bank's interests.

Bank managers shall refuse from participation in making decisions if the conflict of interests does not allow them to exercise their functions in full in the interests of the bank, its depositors and participants. In such cases, the bank manager, who is a member of a collegiate body, shall have no voting right when said body is making decisions and shall not be counted in for the respective collegiate body quorum purposes.

### **Article 43. Obligations in Respect to Protection of Bank Interests**

Bank managers, in exercising their duties under the present Law, shall act in the best interests of the bank and its clients, and shall place the bank's interests before their own.

In particular, the bank managers shall:

- 1) demonstrate due professional care in the performance of their duties
- 2) make decisions within the powers vested
- 3) take no advantage of their professional status for their personal benefit
- 4) ensure preservation and transfer of the bank property and documents when bank managers are dismissed.

#### **Article 44. Internal Control and Risk Management**

The bank shall develop a comprehensive, adequate, and efficient system for internal control, including risk management and internal audit, in line with the requirements set by the NBU.

The internal control system shall ensure:

- 1) achieving the bank's long-term objectives, in particular, its operational profitability
- 2) carrying out banking activities, allowing for risks
- 3) compliance of the bank's activities with Ukrainian laws and bank's internal documents
- 4) correctness of the bank's financial, management, and statistical reporting
- 5) clear distribution of responsibilities, functions, and powers between the bank's supervisory board and the bank's board, and between the bank's units.

The internal control of the bank shall be exercised by the bank's units at three levels:

level one: business line units and support functions

level two: risk management function and compliance function

level three: internal audit function.

The bank's risk management system shall ensure detection, measuring, monitoring, control, reporting and mitigation of all material risks of the bank, taking into account the size of the bank, complexity, volumes, types, and nature of its operations, the organizational structure and risk profile of the bank, and the specifics of a systemically important bank (in case the bank has such a status) and/or the activity of the banking group where the bank belongs.

The bank shall be obliged to draft in line with the NBU requirements and submit to the NBU its business continuity, emergency funding, and business recovery plans.

The bank shall establish permanent risk management function and compliance function and ensure their independent, unbiased and effective operation.

The risk management function and the compliance function shall be governed by regulations approved by the bank's supervisory board and report to the chief risk officer and the chief compliance officer respectively. The chief risk officer and the chief compliance officer shall report to the bank's supervisory board.

Eligibility requirements to the professional suitability and business reputation of the chief risk officer and the chief compliance officer shall be set by the NBU. The chief risk officer and the chief compliance officer shall take office after they are approved by the NBU.

The bank is authorized to appoint the chief compliance officer as the bank's official in charge of performing financial monitoring.

The NBU shall have the right to require from the bank to change the chief risk manager and chief compliance manager, if their professional suitability and/or business reputation does not meet the requirements set by the NBU. The bank shall take measures to change the respective officer upon request of the NBU.

The Bank shall be obliged to get the NBU's approval of the dismissal of the chief risk officer and chief compliance officer, except in the following cases: dismissal of such persons at their own request, dismissal with the consent of the parties or dismissal due to the expiration of the employment agreement (contract).

#### **Article 45. Bank's Internal Audit**

The bank shall establish a permanent internal audit function.

The Internal audit function shall operate in compliance with international standards for the professional practice of internal auditing, in particular, the documents (requirements) adopted by the International Internal Audit Standards Board (IIASB) and approved by International Professional Practices Framework Oversight Council (IPPFOC).

The NBU shall set professional eligibility requirements to the internal audit staff.

Internal audit function shall operate on the basis of the regulation, approved by the supervisory board of the bank. Head of Internal Audit function shall report to the supervisory board of the bank.

The organization and operational procedures of the internal audit function shall be established centrally by the parent bank for its subsidiaries. The internal audit functions in the bank's subsidiaries may be performed by internal audit unit of the parent bank.

The internal audit shall exercise the following functions:

- 1) assess efficiency of the bank's corporate governance arrangements, internal control system, including the risk management system and their relevance to the size of the bank, complexity, volumes, types, and nature of its operations, the organizational structure and risk profile of the bank, and the specifics of a systemically important bank (in case the bank has such a status) and/or the activity of the banking group where the bank belongs
- 2) check the bank's management processes including those related to capital adequacy and liquidity adequacy assessment
- 3) check the compliance of managers and employees of the bank with the requirements of laws and internal regulations of the bank
- 4) evaluate the informational and technical support to management and operations
- 5) check correctness and reliability of accounting and financial reporting
- 6) check the financial and economic activities of the bank
- 7) check compliance with eligibility requirements and performance of professional duties by bank employees
- 8) identify and check cases of abuse of power by bank officials and conflicts of interest in the bank
- 9) check the accuracy and timeliness of the provision of information to public authorities and management bodies that within their competence exercise supervision over the bank's activities
- 10) other functions related to the supervision of the bank.

The internal audit function performs the assessment of the bank's activities that are ensured through engagement of legal entities and individuals on a contractual basis (outsourcing).

Based on the findings of inspections, the internal audit function shall prepare reports and recommendations to eliminate detected violations.

The bank is obliged to submit to the NBU a report on the work of the internal audit function and other documents based on the results of the internal audit in accordance with the procedure established by the regulations of the NBU.

The NBU shall approve the head of the internal audit function. Eligibility requirements to the professional suitability and business reputation of the head of the internal audit function shall be set by the NBU.

The head of the internal audit function shall take office after approval by the NBU. The NBU shall have the right to require from the bank to change the chief risk manager and chief compliance manager, if their professional suitability and/or business reputation does not meet the requirements set by the NBU. The bank shall take measures to change such officer upon request of the NBU.

The head of the internal audit shall be prohibited to occupy positions in other banks.

The supervisory board shall make a decision to dismiss the head of internal audit.

The Bank is obliged to get the NBU's approval of the dismissal of the head of the internal audit function, except in the following cases: dismissal of such a person at their own request, dismissal with the consent of the parties or dismissal due to the expiration of the employment agreement (contract).

The head of the internal audit function has the right to request the convocation of the extraordinary meeting of the bank's supervisory board.

While performing their functional duties, the staff members of the internal audit function shall have the right to study documents, information, and written explanations related to bank's activities, including about all units of the bank regardless of their country of location, and affiliated companies of the bank, they shall also have the right to access the system of automation of banking transactions and to obtain written explanations from the managers and employees of the bank on the issues that arise while performing the inspection and based on the inspection results.

#### **Article 46. Obligations to Inform the NBU**

The bank is obliged to provide the NBU within 10 business days:

after their approval at the general meeting of bank's shareholders, the changes in the core business lines of the bank

after their approval by the bank's supervisory board, the bank's strategy and business plan/amendments thereto

after their approval by the bank's supervisory board, the bank's problem assets management strategy and action plan/amendments thereto.

The board of a bank shall, within 3 business days, inform the NBU of the following:

1) termination of powers / dismissal of the head (heads) of the bank, head of the internal audit department, chief risk manager, chief compliance manager, indicating the grounds for such dismissal and the candidates for appointment to these positions (if any)

2) changes in the registered address and domicile of the bank and its standalone units

3) losses in the amount that exceeds 15% of the bank's equity

4) equity decreasing to a level lower than that of the regulatory capital

5) existence of at least one of the grounds for classifying the bank as a problem or insolvent bank or for revoking a banking license and liquidating the bank

- 6) termination of banking operations
- 7) receipt of a notice of suspicion of a criminal offense issued to the head of the bank, an individual qualifying shareholder or a representative of a legal entity owing a qualifying holding
- 8) detection of the facts of any failures of an owner of a qualifying holding to meet the NBU's requirements to business reputation and/or financial/property standing, as well as the signs that such entity being an owner of a qualifying holding poses a threat to interests of depositors and other creditors of the bank.

The supervisory board of a bank shall, within 3 business days after detection, inform the NBU of the following:

- 1) conflict(s) of interests in the bank
- 2) confirmed cases of unacceptable behavior in the bank
- 3) deficiencies in the operation of the bank's supervisory board, the bank's management board, as well as the risk management function, the compliance function, and the internal audit function
- 4) detected facts concerning the bank's managers, chief risk officer, chief compliance officer, head of the internal audit function, which indicate their noncompliance with the eligibility requirements set by the NBU, as well as the availability of information that may indicate/indicate possible negative impact on performing their duties by such persons.

The NBU shall have the right to determine the list of other information that is important for the purposes of banking supervision, currency supervision, oversight of payment and settlement systems, as well as for checking banks' compliance with laws on prevention and counteraction to legalization (laundering) of the proceeds from crime, terrorism financing and financing of weapons of mass destruction proliferation. The bank and owners of a qualifying holding shall be obliged to provide the NBU with such information.

## **Chapter 8. REQUIREMENTS TO BANK ACTIVITIES**

### **Article 47. Types of Banking Activities**

A bank is entitled to render the banking and other financial services (except the insurance) as well as to engage itself in other activities stipulated by this Article, in both domestic and foreign currencies.

A bank has the right to engage itself in banking upon obtaining the banking license by means of rendering the banking services. A bank conducts professional activity in the capital markets based on the license granted by the National Securities and Stock Market Commission.

The banking services include:

- 1) accepting deposits in currency and investment metals from an unlimited number of legal entities and individuals
- 2) opening and maintaining customers' current (correspondent) accounts including those in investment metals, and escrow accounts

*{Article 47 part three paragraph 2) in the wording of Law No. 1591-IX dated 30 June 2021 to come into effect on 1 August 2022}*

- 3) placing the currency and investment metals accepted as deposits (including the balances on the current accounts) on the bank's own behalf and for its own account.

Only banks are entitled to render banking services.

A bank is entitled to render certain financial services to its customers (other than banks) through entering into agent agreements with legal entities (commercial agents). The list of the financial services a bank is entitled to render to its customers (other than banks) through entering into agent agreements shall be compiled by the NBU. A bank shall be obliged to inform the NBU of the signed agent agreements. The NBU shall maintain the register of banks' commercial agents and establish requirements thereto. Banks may enter into agent agreements with the legal entities that comply with the requirements established by the NBU.

The Bank shall render the services of currency assets trading in cash and noncash forms to individuals and legal entities with the simultaneous crediting the currency assets to their accounts pursuant to the [Law of Ukraine On Currency and Currency Operations](#).

In addition to rendering the financial services any bank is entitled to be engaged in the activities related to:

- 1) investments
- 2) issue of its own securities
- 3) Article 47 part eight paragraph 3 was excluded
- 4) custody of assets (including accounting and custody of securities and other valuables which have been confiscated (arrested) in favor of the state and/or such that have been declared ownerless), and leasing of an individual lockbox
- 5) cash collection and cash in transit services
- 6) Article 47 part eight paragraph 6 was excluded
- 7) consulting and information services with regard to the banking and other financial services
- 8) services of an issue administrator in line with the Law of Ukraine *On Capital Markets and Regulated Markets*.

A bank is entitled to engage in any legal transactions necessary for rendering the banking and other financial services and for the other bank's activities.

A bank is entitled to engage in a new business type or rendering a new type of the financial services (other than the banking ones) provided it complies with the requirements of the NBU regarding this type of business or service.

A bank shall inform the NBU not later than one month before the intended start of the new type of business or service (with the exception of the banking services) about its intention according the requirements and procedure determined by the NBU.

The NBU shall have the right to set forth additional requirements, including the requirements to raise the level of the regulatory capital of the bank or other economic ratios, related to a particular type of the activities and financial services the bank is entitled to, with the purpose of protecting the rights of depositors and other creditors. A bank shall be obliged to comply with the legal requirements for protection of consumer rights when disclosing information on interest rates and commission fees on the services rendered to financial services consumers.

A bank may independently set the interest rates and commission fees on the services rendered.

### **Article 48. Restrictions on Bank Activities**

Banks shall be prohibited from risky activities that pose a threat to the interests of depositors or other bank's creditors.

The NBU's conclusion that the bank's activities are risky and pose a threat to the interests of depositors or other bank creditors shall be based on the list of criteria defined in the NBU regulatory document and published in accordance with the procedure established by the law.

Banks shall be prohibited from carrying out activities in the sphere of material production, trade (with the exception of sale of the commemorative, jubilee and investment coins) and insurance, but may act as an insurance intermediary.

Specialized banks (with the exception of the savings banks) shall be prohibited from accepting deposits from individuals in the amounts exceeding 5% of the bank's capital.

A bank may own real estate whose total value shall not exceed 25 percent of the bank's equity. This restriction does not apply to:

- 1) premises used for technological performance of banking functions
- 2) property foreclosed by a bank under the terms of a contract of pledge
- 3) property acquired by a bank in order to prevent losses, on condition that the bank shall alienate this property within one year from the moment of obtaining the ownership rights
- 4) property held by a bank on trust.

Banks are prohibited to take funds of individuals and directly disburse them as loans without showing them on assets and liabilities of a bank.

### **Article 49. Lending Operations**

In this Article, the lending operations mean the operations, listed in paragraph 3 of the third part of Article 47 of the present Law, as well as:

- 1) performance of operations in the capital markets on its own behalf
- 2) granting guarantees, warranties and other commitments on behalf of third persons that require settlement in monetary form
- 3) acquisition of the right to claim the fulfillment of liabilities in monetary form for the delivery of goods and rendering of services, taking on the risk of satisfying these claims and receipt of payments (factoring)
- 4) leasing.

Banks may enter into consortium crediting agreements in order to provide joint financing. Within the framework of such an agreement, the participating banks shall determine the terms of extending credit

and appoint a bank responsible for implementation of the agreement. The member banks shall bear risks on the extended credit proportionally to their contributions to the consortium.

A bank shall have a division responsible for lending and management of credit-related operations.

The banks shall be prohibited from granting loans directly or indirectly to acquire their own securities, shares of other banks and to extend subordinated debt to banks. The use of securities of their own issue as collateral may be possible only with the NBU permission.

The banks are prohibited from indirectly carrying out lending transactions with bank's related parties.

When granting credits, the banks shall adhere to the general principles of lending, including the evaluation of creditworthiness of borrowers and the availability of collateral, and adhere to the requirements concerning risk concentration, established by the NBU.

A bank has the right to extend unsecured loans on condition that the economic ratios are met.

Granting of noninterest bearing credits is prohibited except in the cases specified by the law.

In the case of late payment of principal loan amount and interest, a bank shall have the right to issue an order on the enforced payment of debt, if provided for in the agreement.

A bank shall use information from the CR for credit risk assessment.

#### **Article 50. Restrictions on the Banks' Participation in Legal Entities**

The bank shall have the right to acquire shares (stakes) of a legal entity which make or will make 10 percent or more of the authorized capital in the aggregate provided it has previously received the NBU's written permission for such acquisition in the manner prescribed by the NBU.

The bank shall have the right to acquire shares (stakes) of a legal entity which make or will make 10 percent or more of the authorized capital in the aggregate without receipt of the NBU's written permission for such acquisition in the following cases:

- 1) shares (stakes) in such legal entity will be acquired in connection with realization by the bank of the pledgee right and/or as the repayment of debt to the bank under the performed banking transactions and rendered services, provided the bank will not hold them more than one year
- 2) shares will be acquired by the bank as a result of underwriting, provided the bank will not hold them more than one year.

The bank shall be obliged to alienate shares (stakes) acquired under part two of this Article within one year from the date of acquisition of title to them or, before the end of this period, apply to the NBU for written permission for further holding them by the bank.

The bank shall be prohibited to acquire a holding in a legal entity in the event that laws or the charter of this entity provide for full responsibility of a participant for liabilities of such legal entity.

The direct and/or indirect holding of the bank in the authorized capital of any legal entity shall not exceed 15 percent of the bank's regulatory capital. The total investments of the bank in authorized capital of legal entities shall not exceed 60 percent of the bank's regulatory capital.

The requirements of part five of this Article shall not be applied in the event that:

- 1) shares (stakes) and other securities acquired by the bank in connection with realization by the bank of the pledgee right and/or as the repayment of debt to the bank under the performed banking transactions and rendered services, and the bank has not held them more than one year



- 2) the investment is made in the authorized capital of a bank being a banking group participant
- 3) securities have been obtained by the bank as a result of underwriting and have not been held by this bank for more than one year
- 4) shares and other securities acquired by the bank at the expense and on behalf of its customers.

### **Article 51. Bank Settlement Operations**

In order to perform banking activity, banks shall open and service the correspondent accounts with the NBU, other banks in Ukraine and abroad, as well as banking accounts for legal entities and individuals in the hryvnia and foreign currencies.

Bank settlements shall be carried out in the cash and cashless form in accordance with the rules established by the NBU regulations.

The cashless settlements shall be carried out on the basis of settlement documents in a paper or electronic form.

As the payment instruments, banks in Ukraine may use the payment orders, payment requests, request orders, bills of exchange, cheques, banking payment cards, and other debit and credit payment instruments used in international banking practice.

The payment instruments shall be properly prepared and contain data on the issuer, payment system where they are used, legal grounds for the settlement operation and, as a rule, holder of the payment instrument and fund recipient, value date, and other information necessary for effecting the settlement by the bank in full conformity with instructions of the account owner or the other initiator of the settlement operation stipulated by law.

In the course of settlement operations, banks shall check the accuracy and verify the documents.

When effecting payments under the agreements concluded by the enterprises, founded in the established order by the public authorities, government bodies of the Autonomous Republic of the Crimea or by local authorities, and empowered to receive the state funds, assume obligations thereunder and make payments, including by the state, state-established unitary and public utility enterprises as well as business partnerships in whose authorized capital the state or municipal portion of shares (stakes) exceeds 50 percent, and by their subsidiaries and enterprises or business partnerships in whose authorized capital 50 or more percent belong to the state, state-established unitary and public utility enterprises or business partnerships in whose authorized capital the state or municipal portion of shares (stakes) exceeds 50 percent as well as by amalgamations (associations) of such enterprises (business partnerships), the banks shall verify availability of the report on results of the procurement procedure and other documents that confirm compliance of such enterprises and business partnerships with the requirements of the Law of Ukraine *On Public Procurement*.

### **Article 52. Bank's Related Parties**

For the purposes of this Law, the bank's related parties shall be the following:

- 1) bank controllers
- 2) persons having a qualifying holding in the bank, and persons through which indirect ownership of the qualifying holding in the bank is exercised by such persons

- 3) bank managers, head of the internal audit function, chief risk officer, chief compliance officer, chairmen and members of the bank's board and supervisory board committees
- 4) bank's congenerous parties and affiliates including banking group participants
- 5) owners of a qualifying holding in the bank's congenerous parties and affiliates
- 6) managers of legal entities and banks' managers who are the bank's congenerous parties and affiliates, head of the internal audit function, chairmen and committee members of such entities
- 7) associated persons of the individuals specified in paragraphs 1-6 of this part
- 8) legal entities where the individuals mentioned in this part are managers or owners of a qualifying holding
- 9) any entity, through which a transaction is performed in the interests of the persons referred to in this part.

A person shall be deemed a bank's related party from the moment when the grounds for identifying said person as the bank's related party arise pursuant to the requirements of this Article.

A bank shall be obliged to check a person's relatedness before establishing contract relations and/or conducting transactions with said person, which can change the bank's volume of related party transactions and/or can be conducted under current nonmarket conditions. Banks shall carry out an ongoing monitoring of their transactions that could change the volume of their related party transactions.

Banks shall identify related parties listed in part one of this Article. Banks shall identify related parties specified in paragraph 9 of part one of this Article applying the attributes of relatedness established by NBU regulations considering the nature of the relations, transactions, and other ties with the bank. The bank shall adjust its activity taking into consideration any identified related party the next day after such identification.

The bank must submit to the NBU the information about the bank's related parties according to the procedure defined in the NBU regulations.

In the course of its supervisory activities, the NBU may identify individuals and legal entities specified in part one of this Article as a bank's related parties, if they have not been identified as related parties by the bank itself. The NBU shall have the right to identify the bank's related parties applying the attributes of relatedness defined by the NBU regulations in the cases specified by this Article and taking into account the nature of the relations, transactions, and other ties with the bank. Before examining an identification case of the bank's related party, the NBU shall request the relevant information from the bank as well as the explanations of their failure to identify said related party. The NBU's decision on identification of the bank's related party shall come into force on the following day after the day the decision was made. On the day of such decision, the NBU shall notify the bank in question about the respective decision in writing (in paper or electronic form pursuant to the laws in force). The bank shall adjust its activity taking into consideration the NBU's decision on identification of the bank's related party the next business day after receiving the respective notification from the NBU.

Following the procedure prescribed by the law, the person, identified by the decision of the NBU as the bank's related party, or the bank itself may challenge the NBU's decision on identifying the person to be the bank's related party, and in the event of holding such person liable in accordance with the

law – to challenge the grounds for such NBU decision on identifying the person as the bank's related party.

The agreements entered into with the related parties of the bank shall not be based on conditions other than current market conditions.

The agreements between a bank and its related parties, should they contain conditions other than current market conditions, shall be declared void from the date of agreement.

The following conditions shall not be deemed current market conditions:

- 1) acceptance of collateral that is of a lower value than that required from other clients
- 2) purchase of low-quality property or property at a higher price from a related party
- 3) investment in securities of a related party that the bank would not make in securities of other party
- 4) payment for goods or services from a related party at a price higher than usual, or under the circumstances when the same goods or services would never be procured from other party
- 5) sale to a bank's related party of the property that is of a lower value than the property which would have been received by the bank from the sale of such property to another person
- 6) accrual of the lower than usual interest rates and commission fees for services provided to the related parties by the bank
- 7) accrual of the bigger than usual interests on deposits raised by the banks from the related parties
- 8) assignment for use of property to a bank's related party with payments lower than what the bank would receive from a person that is not related or getting the assignment for use of property from a related party with a higher payment amount.

It is prohibited for a bank to extend loans to any person for the following purposes:

- 1) repaying obligations of this person to the bank's related party
- 2) acquiring assets of the bank's related party with the exception of the products manufactured by the latter
- 3) acquiring the securities placed or underwritten by the bank's related party or the rights to which the bank's related party is entitled.

The NBU shall control the bank transactions with the bank's related parties.

The NBU shall have the right to introduce restrictions for the bank transactions with the bank's related parties.

### **Article 53. Ensuring Competition within the Banking System**

It is prohibited for banks to enter into the agreements in order to limit competition and monopolize crediting terms, other banking services, and establishment of the interest rates and commission fees.

It is prohibited for a bank to take any other actions for introduction of the unfair competition to its practice.

Instances of the unfair competition in rendering any banking services or conducting operations by a bank shall be the grounds for prohibiting this bank from further providing such services or performing operations.

#### **Article 54. Credibility of Advertising**

Banks are prohibited from distributing any form of advertising that contains untrue information about their activity in the area of banking services.

The NBU has the right to apply coercive actions to the banks and other persons violating the requirements of this Article.

### **Chapter 9. BANK RELATIONS WITH CLIENTS**

#### **Article 55. Regulation of the Bank Relations with Clients**

The relations between a bank and its clients are regulated by the laws of Ukraine, NBU regulations and agreements (contracts) between the clients and the bank.

A bank shall make every effort to avoid conflicts of interest of the bank employees and clients, and conflicts of interest of the bank clients.

The banks are prohibited from demanding that clients acquire any product or service from the bank or from a bank's affiliate or related party as a mandatory condition to render banking services.

The banks are prohibited from changing unilaterally the terms and conditions of the agreements (contracts) concluded with their clients, in particular to increase the interest rate under the loan agreements or decrease it under the deposit agreements (except the demand deposits), excepted the cases envisaged by law.

A bank acting as a proxy, agent or other representative/intermediary may take funds of individuals on behalf of the third parties (including nonbank financial institutions), only after the individuals are informed in writing that such funds will not be considered a bank deposit and will not be guaranteed under the Law of Ukraine *On Households Deposit Guarantee System*.

#### **Article 56. Right of Clients to Information**

A client shall be entitled to have access to the information on a bank's activities. The banks shall furnish client with the following information upon request:

- 1) information, which is subject to mandatory disclosure, on financial indicators of the bank's activities and its economic position
- 2) the list of bank managers and its standalone units, as well as legal entities and individuals, which own a qualifying holding in the bank
- 3) the list of services rendered by the bank
- 4) the price of banking services

5) other information and consultations pertaining to rendering the banking services

6) information on the number of bank shares (stakes) owned by the executive body members of the bank and, on a scale determined by the NBU, on the persons whose share within the bank authorized capital exceeds 5%

7) information that must be provided in accordance with the laws.

Banks shall have a website and post the information required by the law, the NBU regulations and the regulations of the National Securities and Stock Market Commission. Banks shall ensure the accuracy and relevance of the information posted on their website.

The bank shall post information on its website about debtors who are the bank's related parties with overdue obligations (the principal amount and interest) exceeding 180 days as well as the bank's claims to such debtors. The information on such debtors shall contain the following:

1) for individuals – surname, name and patronymic, the overdue amount, number of the exceeding days

2) for legal entities – full name, EDRPOU identification number, the overdue amount, number of the exceeding days.

The bank shall update on the monthly basis the information specified in part three of this Article as of the first business day of a month that follows the reporting month during the entire period when a debtor individual, who is the bank's related party, exceeds the time limit for repayment of their debt to the bank. Disclosure of such information does not require an approval from the debtor individual, who is the bank's related party. The bank shall remove the information specified in part three of this Article on debtors, who are the bank's related parties, who have fulfilled their obligations to the bank or their obligations have been suspended as of the day of updating the information.

The NBU shall have the right to determine the minimum amount of information to be provided to a financial services consumer in respect of each type of banking services, unless such minimum amount of information is established by law.

### **Article 57. Insurance of Households' Deposits**

Household deposits (including those of sole proprietors) with banks shall be guaranteed in the order, and to the extent, stipulated by the Ukrainian legislation.

### **Article 58. Bank's Responsibility for its Obligations**

A bank shall be liable for its obligations with all its assets in accordance with the laws of Ukraine.

A bank shall not be liable for the failure to fulfill its obligations, or the failure to fulfill its obligations in due time, if the NBU has decided to impose limitations on bank's activities, or an authorized government body has stopped transactions with the bank's accounts.

The bank's participants shall be liable for the bank's obligations in accordance with the laws of Ukraine and the charter of the bank.

Owners of a qualifying holding in a bank shall be obliged to take timely measures to prevent the bank's insolvency.

The bank's related party shall bear civil, administrative and criminal responsibility for violating the requirements of the law, including the NBU regulations, conducting risky operations that threaten the interests of depositors or other creditors of the bank and for bringing the bank to insolvency.

The bank's related party, the acts or omissions of which resulted in damaging the bank through its fault, shall be liable with its property. If the bank's related party caused damage to the bank through its acts or omissions while another related party of the bank received the property benefit directly or indirectly as a result of those acts or omissions, such parties shall be jointly liable for the damage caused to the bank.

### **Article 59. Attachment, Seizure and Suspension of Accounts**

Property (excluding funds of a bank placed on its correspondent accounts) as well as funds and other valuables of legal entities and individuals placed with the bank may be attached (seized) only upon the decision of state enforcement agent, private enforcement agent or by court decision on seizure or attachment according to the procedure established by law. The property and funds may be released from the attachment by a decision of state enforcement agent, private enforcement agent or by a court decision.

The suspension of debit operations of a bank on accounts of legal entities and individuals may take place only in the case of seizing in accordance with part one of this Article as well as in other cases envisaged by an agreement, the Law of Ukraine *On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime, Terrorism Financing and Financing Proliferation of Weapons of Mass Destruction*, other laws and/or terms of encumbrance of the ownership rights to cash in bank accounts. The suspension of debit operations shall be effected within the amount of the funds attached except for the cases when the attachment is imposed without setting such an amount or if otherwise provided by an agreement, law or terms of such encumbrance.

In the cases established by law, seized funds or other valuables of legal entities or individuals in a bank, shall be placed under the management (transferred to the accounts) of the National Agency for Identification, Recovery and Management of Assets Derived from Corruption and Other Crimes within one business day after the bank receives from the National Agency a claim and copies of a prosecutor's request and decision of examining magistrate, court decision on asset seizure.

It is prohibited to attach the funds placed on correspondent accounts of the bank.

The procedure for seizure of funds on a bank's correspondent accounts shall be established by the NBU.

The NBU shall seize funds on the correspondent accounts of a bank at the request of the Household Deposit Guarantee Fund only in the instances stipulated by the Law of Ukraine *On Households Deposit Guarantee System*.

## **Chapter 10. BANK SECRECY AND CONFIDENTIALITY OF INFORMATION**

### **Article 60. Bank Secrecy**

The information on activities and financial position of a client, which became known to the bank in the course of servicing the client and maintaining relations with the client or became known to third parties through rendering of bank services or exercise of functions specified by laws, as well as information about the bank specified in this Article, shall be bank secrecy.

Particularly, the bank secrecy comprises:

- 1) information on clients' bank accounts, including the correspondent accounts of banks with the NBU
- 2) information on operations effected in favor or upon instructions of the client and the client's transactions
- 3) financial and economic position of clients
- 4) information on arrangement and operation of the bank's security systems to protect the bank and people on its premises
- 5) information on the organizational and legal structure of corporate clients (legal entities), their managers and business lines
- 6) information on the client's commercial activities or commercial secrets, any projects, inventions, product samples, and other commercial information
- 7) information on reports of a specific bank, with the exception of the publicly disclosed information
- 8) codes used by banks for data protection
- 9) information obtained in the process of creditworthiness assessment of an individual intending to enter into a consumer credit agreement
- 10) information on arrangement and operation of cash collection and/or transportation of currency valuables
- 11) information on banks or their clients obtained from the banks in the process of banking supervision, currency supervision, oversight of payment and settlement systems, and supervision in the area of prevention and counteraction to the legalization (laundering) of the proceeds from crime, terrorism financing, and financing proliferation of weapons of mass destruction
- 12) information on banks or their clients obtained by the NBU from a banking supervision authority of another country pursuant to an international treaty or under the principle of reciprocity
- 13) the NBU decisions on imposing corrective measures, except for decisions on fines, declaring a bank insolvent, revoking the banking license, and bank liquidation.

The provisions of parts one and two of this Article shall not cover the following:

information subject to the mandatory publication. The list of information subject to the mandatory publication shall be set forth by the NBU

information on debtors, who are the bank's related parties and their overdue payment obligations (the principal amount and interest) to the bank exceeded 180 days, and on the bank's claims to such debtors. As for a bank under the liquidation procedure pursuant to the Law of Ukraine *On Households Deposit Guarantee System*, they shall not cover the information on all debtors who, according to the bank's books, have overdue payment obligations (the principal amount and interest) to the bank regardless of the overdue period.

Information from the depository record-keeping system owned by the NBU and the banks as participants of the depository system of Ukraine shall not constitute the bank secrecy. Disclosure and

protection of information contained in the depository system shall be conducted by the NBU and the banks based on the grounds and pursuant to the procedure set forth in the law on the depository system of Ukraine.

The NBU shall issue regulations on safekeeping, protection, usage and disclosure of the information that constitutes the bank secrecy and provide the guidelines on application of these regulations.

Provisions of other laws of Ukraine on the scope and procedure for disclosure of information that constitutes the bank secrecy are in effect unless they contravene this Law.

### **Article 61. Obligations to Maintain Bank Secrecy**

The banks and the NBU shall ensure the protection of bank secrecy by:

- 1) limiting the number of persons who have access to the information that constitutes the bank secrecy
- 2) organizing special handling and processing of the documents containing bank secrecy
- 3) using technical means to prevent unauthorized access to the electronic and other information carriers
- 4) applying the provisions aimed at protecting bank secrecy that envisage responsibility for its disclosure in the agreements and contracts concluded between the bank and its client.

When hired, the bank's and the NBU's managers and other employees shall sign a commitment to keep bank secrecy confidential. Managers and employees of Ukrainian banks and the NBU shall be obliged not to disclose or use to their advantage or to the advantage of third parties the information that is bank secrecy that becomes known to them in connection with the discharge of their duties.

Public authorities, legal entities, and individuals that have, in exercising their legally established functions or in rendering services to a bank, directly or indirectly obtained the information that is bank secrecy shall, in accordance with the procedure prescribed by the law, ensure the safety of such information, and shall not disclose or use said information for their own benefit or for the benefit of third parties.

Persons that are in breach of the procedure for disclosure and use of information that is bank secrecy shall bear criminal and other liability in accordance with the law.

Persons guilty of disclosing information constituting bank secrecy and/or using it for their own benefit or for the benefit of third parties in a way that has caused damage to the bank or its client are obliged to compensate said damage and any nonpecuniary damage in accordance with the law.

Restrictions on obtaining information that is bank secrecy that are specified in [Articles 62](#) i 62<sup>2</sup> hereof shall not apply to the NBU's employees or authorized persons who, within their purview as prescribed here, perform functions of banking supervision, currency supervision, oversight of payment system and settlement system, supervision of the markets for nonbank financial services, protection of the rights of consumers of financial services, and inspection of compliance with legislation on prevention and counteraction to legalization (laundering) of the proceeds from crime, terrorism financing and financing of weapons of mass destruction proliferation.

The restrictions on obtaining bank secrecy specified in [Articles 62](#) i 62<sup>2</sup> hereof shall not apply to the employees of the Household Deposit Guarantee Fund when they exercise their regular duties and powers set forth in the [Law of Ukraine On Households Deposit Guarantee System](#).

In the case of provisional administration or liquidation of an insolvent bank, the Deposit Guarantee Fund, in taking measures to prepare a bank for resolution, shall have the right to disclose information that contain bank secrecy to qualified entities, a successor bank, a bridge bank, an investor purchasing the insolvent or a bridge bank, or to other parties involved in the provisional administration, or liquidation. These entities shall ensure that bank secrecy is protected.



The National Securities and Stock Market Commission has the right to provide information obtained from banks and constituting bank secrecy, in the manner prescribed by this Law, to the national regulators of securities markets of member states of the International Organization of Securities Commissions (IOSCO). The information thus provided (received) may be used exclusively for the purpose of state regulation of the securities market and/or performance by the National Securities and Stock Market Commission of its functions.

## **Article 62. Procedure for Disclosing Bank Secrecy**

Information on legal entities and individuals, which constitutes bank secrecy, shall be disclosed by banks:

1) in response to a request or with the written consent of the respective legal entity or individual. Information regarding escrow account and respective transactions shall also be disclosed upon the beneficiary's written request. Information regarding bank account balance subject to encumbrance, respective account transactions, encumbrance notifications received by a bank (including those registered by a bank) and other restrictions in the right of account disposal shall be disclosed upon the written request of the encumbrancer, if the terms of transaction resulting in encumbrance entitle the encumbrancer to receive the respective information

2) by the decision of court

3) to bodies of the Prosecutor's Office of Ukraine, Security Service of Ukraine, State Bureau of Investigation, bodies of the National Police of Ukraine, National Anti-Corruption Bureau of Ukraine, Bureau of Economic Security of Ukraine, Antimonopoly Committee of Ukraine, National Agency for Prevention of Corruption, National Agency of Ukraine for Detection, Investigation, and Management of Assets Acquired through Corruption and Other Crimes, if said authorities request information about a client's bank accounts and transactions carried out for or on behalf of the client, including transactions without opening accounts, namely information as of a specific date or for a specific period of time and in relation to a specific individual or a legal entity or a sole proprietor about: availability of accounts, account numbers, account balances, debit and credit transactions with the accounts, purpose of payment, identification data about the counterparty (for individuals: last name, first name, and middle name, taxpayer identification number; for legal entities: full name, identification code in the United State Register of Legal Entities, Sole Proprietors, and Public Organizations), counterparty account number and counterparty bank code

4) to the central authority implementing state tax policy:

a) at its request about the existence of bank accounts

b) in the cases and to the extent specified in the [Agreement](#) between the government of Ukraine and the government of the United States of America to improve compliance with tax rules and application of the provisions of the US Foreign Account Tax Act (FATCA) and other international agreements containing provisions on the exchange of information for tax purposes, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, or interdepartmental agreements concluded on their basis. The procedure for disclosing such information shall be established by the National Bank of Ukraine.

c) at its request regarding compliance by residents with the deadlines set by the National Bank of Ukraine for settlements in exports and imports of goods

5) to the central authority that implements the state policy in the field of preventing and counteracting the legalization (laundering) of proceeds from crime or terrorist financing, at its request in cases established by the [Law of Ukraine On Prevention and Counteraction to Legalization \(Laundering\) of the Proceeds from Crime, Terrorism Financing and Financing of Weapons of Mass Destruction](#)

6) to state enforcement agencies and private enforcement agents at their request concerning enforcement of court judgments and decisions subject to enforcement in accordance with the [Law of Ukraine On Enforcement Proceeding](#) concerning banking accounts of clients and transactions executed for the benefit or upon instructions of clients, in particular, data as of a specific date or for a specific period of time and in relation to a specific legal entity or individual or sole proprietor about: open accounts, numbers of accounts, balances, withdrawal of and/or crediting funds to accounts, purpose of payments, identity details, a counterparty's number of an account and bank code as at the specific date or period of time and of a certain legal entity or an individual, a sole proprietorship during a specified period of time, as well as information on the debtor's custodial services contracts or safe deposit box agreements with a bank

7) to the National Securities and Stock Market Commission in case of individual submission by a bank of information about a bank as an issuer and administrative data in accordance with the laws concerning securities and stock market

8) to other banks at their request in the cases provided for by this Law and the [Law of Ukraine On Prevention and Counteraction to Legalization \(Laundering\) of the Proceeds from Crime, Terrorism Financing and Financing of Weapons of Mass Destruction](#)

9) to the central authority that ensures the formation and implementation of state financial and budgetary policy, in order to verify and monitor government payments, at its request about the bank accounts of individuals to whom government payments have been assigned, accrued and/or made, as well as individuals who have applied for government payments, write-off transactions and/or crediting to accounts and balances on such accounts on a certain date or for a specific period of time

10) to entities specified by the account (deposit) holder in the relevant order of the bank, and in case of death of such account (deposit) holder, at their request regarding the availability of accounts (deposits) of the deceased owner and the balance of funds on accounts (deposits)

11) to state notary offices, private notaries, officials of local authorities who have notarial powers, foreign consulate offices (for taking notarial actions by such persons to protect the inherited property, issue certificates of inheritance, certificates on the right to own a share in the community property in the event of the death of one of the spouses) - at their request concerning open banking accounts (deposits) and deposit balances of deceased clients of these accounts and/or the balance of funds belonging to deceased individuals and held in any bank accounts, and/or movable property of such persons, which is in safe custody and/or pledged as collateral, existence of an individual lockbox and/or agreements on leasing of an individual lockbox, and/or the availability of escrow accounts and cash in these accounts intended for transfer to deceased beneficiaries.

Requirements to the form and content of a request for information constituting bank secrecy, including to requests of public authorities, their officials and employees shall be determined by the NBU.

The bank shall have the right to provide information constituting bank secrecy to legal entities and individuals to enable them to fulfil their functions or render services to the bank pursuant to agreements entered into between such entities (organizations) and the bank, including information about assignment of right to a client, provided that the functions and/or services specified in the agreements pertain to the activities the bank performs in accordance with Article 47 hereof. The bank shall have the right to provide information constituting bank secrecy to a court, arbitration court, international commercial arbitration, notary, officials of local authorities, and foreign consulate offices authorized to perform notarial actions, to protect its rights and legitimate interests in the cases it is involved in, in Ukraine and abroad.

The bank shall have the right to provide information constituting bank secrecy to other banks and the NBU within the limits required to extend loans, give bank guarantees as well as in the course of currency supervision, including in case of introduction by the NBU of safeguard measures under the [Law of Ukraine On Currency and Currency Operations](#).

The bank shall have the right to disclose the information constituting bank secrecy to the person (including the person that is authorized to act on behalf of the state) in whose favor the bank assets and liabilities are to be alienated when taking actions envisaged by the program of financial rehabilitation of the bank or during the liquidation procedure.

Provisions of part two of this Article shall not apply to the information provided by banks in the following cases:

to the central executive authority that implements the state policy in the field of preventing and counteracting the legalization (laundering) of proceeds from crime, terrorist financing, and financing proliferation of weapons of mass destruction, as prescribed by law

to the central executive authority that implements the state policy, if information relates to opening and closing accounts of taxpayers pursuant to [Article 69](#) of the Tax Code of Ukraine and to finding facts of ownership by an individual (legal entity), the resident of Ukraine, of a share in a foreign legal entity pursuant to Article 39<sup>2</sup> of the [Tax Code of Ukraine](#)

to state enforcement agencies and private enforcement agents, if information relates to opening and closing individuals' accounts pursuant to [Article 9](#) of the Law of Ukraine *On Enforcement Proceedings*

to the Clearing House and National Agency on Corruption Prevention, if information relates to opening and closing accounts of political parties, local organizations of political parties acquiring the status of a legal entity as prescribed by law, in accordance with [Article 14](#) of the Law of Ukraine *On Political Parties in Ukraine*.

The SOB shall provide information constituting bank secrecy to the members of its supervisory board and to the central executive body ensuring government financial policy development, to the extent that is required to monitor the SOB's activities and implementation of the SOB's strategy.

## **Article 62<sup>1</sup>. Excluded**

### **Article 62<sup>2</sup>. Procedure for Disclosing Bank Secrecy by the NBU**

Information on legal entities and individuals, which constitutes bank secrecy, shall be disclosed by the NBU in accordance with the procedure established by the NBU:

- 1) at the request of the respective individual
- 2) at the request of the respective legal entity for information on such entity which is contained in the documents transferred by the Household Deposit Guarantee Fund to the NBU pursuant to Article 52<sup>1</sup> of the Law of Ukraine *On Households Deposit Guarantee System*
- 3) by court decision.

The NBU shall have the right to provide information, which constitutes bank secrecy, on banks in capitalization of which the state participates, to the central executive authority that implements the state financial policy.

The NBU shall have the right to provide the Household Deposit Guarantee Fund with information on banks or their clients obtained in the course of banking supervision, currency supervision, oversight of payment and settlement systems, and supervision in the area of prevention and counteraction to the legalization (laundering) of the proceeds from crime, terrorism financing, and financing proliferation of weapons of mass destruction, and which constitutes bank secrecy in the cases prescribed by the [Law of Ukraine On Households Deposit Guarantee System](#).

The NBU shall have the right to provide the banks with access to information from the Credit Register, which constitutes bank secrecy, in the scope specified in [part thirteen](#) of Article 67<sup>1</sup> hereof.

The NBU shall have the right to disclose information, which constitutes bank secrecy and obtained by the NBU in the course of performing its functions, to state authorities, if the information may provide an evidence on an offence and/or may be used to prevent, detect, terminate, investigate, and hold liable those found guilty for such offence.

For the enforcement purposes, the NBU shall have the right to provide the state enforcement agencies with its decisions on imposing corrective measures in a form of a fine to a bank or a foreign bank branch, which are considered enforcement documents pursuant to this Law and which contain the information constituting bank secrecy. In this case, the state enforcement agency shall have the right to disclose the information, which constitutes bank secrecy, obtained from the NBU to the participants of the enforcement proceedings and to the persons involved in carrying out enforcement actions.

The NBU shall have the right to provide the central executive body implementing the state customs policy with information on banks, which constitutes bank secrecy, obtained in the course of banking supervision in instances stipulated by [the Law of Ukraine On the Regime of Joint Transit and Introduction of the National Electronic Transit System](#).

As part of the information cooperation, the NBU shall have the right, at the request of a bank intending to operate in the capital markets, to provide the National Securities and Stock Market Commission with the documents and information containing bank secrecy required for obtaining the license to conduct professional activities in the capital markets and regulated markets, and necessary for exercising supervision over said bank.

In accordance with an international treaty of Ukraine or under the principle of reciprocity, the NBU shall have the right to provide information obtained in the course of banking supervision activity to a banking supervision authority of another country and to receive such information from a banking supervision authority of another country. The NBU shall have the right to disclose information, which constitutes bank secrecy and was obtained by the NBU from a supervisory authority of another country, however, solely upon prior consent of such authority.

In order to ensure the exercise of its functions and/or protect its lawful interests, the NBU shall have the right to provide information, which constitutes bank secrecy and was obtained by the NBU in the course of performing its functions, to legal entities and individuals under agreements executed between such entities and the NBU.

In order to ensure the exercise of its functions and/or protect its lawful interests, the NBU shall have the right to provide information, which constitutes bank secrecy and was obtained by the NBU in the course of performing its functions, to judicial, law enforcement and/or regulatory bodies of other countries.

The NBU shall have the right to provide information that contains bank secrecy to courts to protect its rights and lawful interests in cases where the NBU is involved.

## **Chapter 11. PREVENTION AND COUNTERACTION TO LEGALIZATION (LAUNDERING) OF THE PROCEEDS FROM CRIME, TERRORISM FINANCING AND FINANCING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION**

### **Article 63. Prevention of Legalization (Laundering) of the Proceeds from Crime, Terrorism Financing and Financing Proliferation of Weapons of Mass Destruction**

When supervising bank activities, the NBU shall inspect banks for their compliance with the laws governing relations in the area of prevention and counteraction to the legalization (laundering) of the

proceeds from crime, terrorism financing, and financing proliferation of weapons of mass destruction (AML/CFT) as well as of sufficiency of the measures aimed at the prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorism financing.

**Article 64. Excluded**

**Article 65. Excluded**

## **Section IV. BANKING ACTIVITY REGULATION. BANKING SUPERVISION**

### **Chapter 12. AUTHORITY OF THE NATIONAL BANK OF UKRAINE AS TO BANKING REGULATION AND SUPERVISION**

#### **Article 66. Forms of Banking Activity Regulation**

State regulation of banking activity shall be performed by the NBU in the following forms:

##### **I. Administrative regulation:**

- 1) registering banks and licensing their activity
- 2) setting the requirements to and limits on bank operations
- 3) applying administrative or financial sanctions
- 4) supervising banks
- 5) giving recommendations as to the banks' activities.

##### **II. Indicative regulation:**

- 1) setting the mandatory economic ratios
- 2) determining reserve requirements to banks
- 3) setting the requirements to banks for defining (calculating) their own inherent risks
- 4) defining the interest rate policy
- 5) refinancing of banks
- 6) correspondent relations
- 7) management of gold and foreign exchange reserves, including the currency interventions
- 8) operations with securities in the open market
- 9) import and export of capital.

## **Article 67. Purpose, Organization, Grounds and Scope of the Supervision**

The purpose of banking supervision is stability of the banking system and protection of interests of depositors and creditors of the bank as to the safekeeping of client's funds on banking accounts.

Supervisory activities of the NBU shall cover all banks, their standalone units, affiliates and congenerous parties of the banks, key participants in the ownership structure of the bank, banking groups, participants therein in the territory of Ukraine and abroad, establishments of foreign banks in Ukraine, as well as other legal entities and individuals in their compliance with the requirements of this Law.

When exercising banking supervision or supervision in the AML/CFT area, the NBU shall have the right to exercise the professional judgment.

The professional judgment shall be formed by the NBU taking into account the following principles:

equivalence of the essence and form (assessment of transactions, operations, situation, and events in the context of their essence and form)

commensurability (proportionality) (taking into account circumstances and conditions of a specific situation about which the professional judgment is formed and a relevant decision is made (in particular, the bank's size; complexity, volume, types, and nature of its transactions; the bank's organizational chart; risk profile; specifics of operation of the bank in the capacity of a systemically important bank (if the bank has this status); activity of the banking group that comprises the bank; financial standing of the bank and of owners of a qualifying holding in it

reasonable doubt (carrying out additional/profound inspection/analysis of transactions, operations, circumstances and/or events in relation to which the professional judgment is formed and the relevant decision is made, if there is any reasonable doubt about them)

comprehensive analysis (research of all circumstances and conditions of a case when forming the professional judgment and taking the relevant decision).

The NBU may apply the professional judgment in the course of any assessment of persons, transactions, operations, circumstances, and events (according to both qualitative and quantitative indicators), which is carried out by the NBU within the purview of its supervisory responsibility (in particular, assessment of the bank's financial health, risks inherent in its operation, viability of the bank's business model, adequacy of the bank's capital and liquidity to the risks to which the bank is exposed or may be exposed, quality of the bank's corporate governance, efficiency of the risk management and internal control systems, including in the AML/CFT area, the impact of risks and stress factors on the efficient, reliable, and reasonable management of the bank, financial stability and protection of interest of depositors and bank creditors).

The documents, in which the professional judgment is set forth, shall be signed/approved/agreed by the NBU Governor or the authorized NBU official.

The decisions made with the application of the professional judgment by the NBU Board and the Committee on Banking Supervision and Regulation and Oversight of Payment Systems can be appealed in a court of law.

A document comprising the professional judgment, except for the decisions made by the NBU Board and the Committee on Banking Supervision and Regulation and Oversight of Payment Systems, can be revised by the Committee on Banking Supervision and Regulation and Oversight of Payment

Systems in line with the procedure set by the NBU upon the request of the entity it relates to. The entity shall have the right to request a revision of a relevant document within 15 business days from the date of its receipt.

The NBU in accordance with the procedure established by it shall be entitled to assess risks in the bank activities.

The NBU, following the bank's assessment made by it within the scope of banking supervision in accordance with the procedures set by the NBU and taking into account assessments of the bank's financial standing and business model, its own inherent risks, quality of its corporate governance and internal control systems, including risk management systems, shall be entitled to:

- 1) establish increased values of economic ratios for the bank
- 2) require that the bank, its management and qualifying holders take measures aimed at improving the financial standing of the bank, maintaining capital and liquidity at the level sufficient to cover all material risks, improving the quality of corporate governance and internal control system, including risk management system
- 3) require that the bank's remuneration policy be revised.

The bank shall be obliged to submit the action plan for implementing the NBU's requirements, which should meet the requirements of the NBU, and ensure its implementation within the determined terms.

If the bank's financial standing deteriorates, which poses a threat to its depositors and other creditors, the NBU is entitled to impose restrictions on the bank's activities.

For the purpose of banking supervision, the NBU is entitled to receive from the public authorities, including the public authorities of foreign states and other entities, the information, including confidential, regarding the financial/property standing of the bank founder(s), key participants in a bank ownership structure and entities that purchase or increase a qualifying holding in the bank, their business reputation, sources of the funds to be used for formation of the bank authorized capital and/or acquisition of or increase in a qualifying holding of the bank, as well as other information necessary for the NBU to perform the functions of state regulation and supervision.

During 20 days from the date of receipt of the NBU request the public authorities and other persons shall furnish NBU with the suitable information.

When performing the banking supervision, the NBU is entitled to require the banks and their managers, responsible persons of banking groups, participants therein to eliminate breaches of the banking laws, comply with the NBU regulations with the purpose of avoiding or surmounting the undesirable consequences that could place in jeopardy the safety of the funds committed to the trust of such banks or inflict harm on proper performance of banking.

When performing the banking supervision, the NBU is entitled to use the services of other institutions, including foreign legal entities and individuals, under separate agreements.

In the event the banking license is revoked, the NBU informs thereof the relevant authorities of other countries, where this bank has had branches or correspondent and other accounts.

The NBU may carry out the banking supervision in the form of onsite inspections and offsite supervision.

Within the offsite supervision, the NBU shall be entitled to:

1) demand in writing from the bank the copies of documents and written explanations on issues of its activities

2) authorize the official(s) of the NBU to supervise the bank's activities, and shall inform the bank thereof within two business days from the date of such authorized official(s) designation.

The bank in question shall furnish the NBU at the written request thereof with the suitable information and copies of the documents.

An authorized official of the NBU shall be entitled to:

1) free access to all premises of the bank during working hours

2) free access to the bank's information related to its activities and any transactions, as well as to all documents of the bank, including those containing restricted information in paper and electronic formats

3) free access to systems of automation of the banking transactions

4) make and withdraw (carry out of the bank premises) copies of the documents that indicate the bank's violations of the Ukrainian law and the NBU regulations

5) be present at general meetings of the participants in the bank, meetings of the bank's supervisory board, management board, and committees.

The bank's management is obliged to provide the NBU's authorized official with the free access during working hours to all premises of the bank, information systems of the bank in a view mode, and advisory support on issues of those systems functioning, and ensure provision of information, documents, and written explanations on the bank's activities, including about any transactions of the bank. The bank is obliged to inform the NBU's authorized official in advance (not later than one business day prior to the event) about the general meetings of the participants in the bank, supervisory board meetings, management board meetings, and meetings of the bank's committees (the mandatory establishment of which is defined in this Law) to be held, including the agenda, and ensure the conditions that allow his/her participation in such meetings

In the course of supervision over the institutions, which carry out banking activity in other countries, the NBU shall cooperate with the relevant authorities of those countries.

When exercising its supervision function the NBU shall cooperate with other authorities regulating the markets of financial services in Ukraine as well as with the respective authorities of other countries engaged in the supervision. The cooperation shall take place on the basis of concluded agreements, memorandums or in other forms.

### **Article 67<sup>1</sup>. Credit Register**

The NBU, in accordance with this Law and NBU regulations, shall establish and maintain the Credit Register to promote financial stability, provide banking supervision, and manage credit risk of banks as part of realization of the government policy on the national security of Ukraine in the economic area.

A bank shall provide to the Credit Register information about lending operations performed by the bank with respect to a borrower, which are specified in [Article 49 part one](#) herein, if a debt amount (principle and interest) on such lending operations equals or exceeds 100 minimum wages (or the equivalent of this amount in the foreign currency according to the official rate established by the NBU on the first business day of the month following the reporting one). The information on lending transactions of the banks, in relation to which the NBU took a decision to declare them insolvent or



a decision on revoking the banking license and liquidation, shall be provided to the Credit Register by the Household Deposit Guarantee Fund (the DGF) directly or by the DGF's authorized person in the event of delegating the DGF's powers to said person.

The bank shall submit to the Credit register the following information:

1) information identifying the borrower, including the following:

for individuals – full name, date of birth, taxpayer's ID number or passport number and series/number of the ID card (for taxpayers who due to their religious beliefs refuse to have taxpayer's ID number and have the relevant stamp in their passport)

for legal entities – full name, ID number in the Single state register of legal entities, sole proprietors and nongovernmental organizations

2) information on terms and conditions of the lending operation and fulfilment of the obligations under the lending operation, in particular:

type of a loan/extended financial commitment

number of the loan agreement

date of the loan agreement

total loan amount/amount of the extended financial commitment according to the agreement

debt under the lending operation

currency of the commitment

maturity date for loan repayment/end date of the extended financial commitment according to the agreement

amount of the past due debt

delay in days

borrower class

3) whether a borrower belongs to the bank's related parties

4) information on collateral for obligations under the lending operation, including suretyship (date of concluding the agreement on collateral for obligations under lending transaction; type of collateral)

5) other information on the corporate borrower including the following:

borrower's economic activity; the period for which the economic activity was defined

borrower's membership in a group of legal entities under common control (defined pursuant to the laws); a list of legal entities that are members of the group of legal entities under common control, which shall be analyzed by the bank to define credit exposure; the identification code in the Single state register of legal entities, sole proprietors and nongovernmental organizations of every legal entity that is a member of the group of legal entities under common control; borrower's position in the group (a parent company or a member); a class of the group defined based on consolidated/combined financial statements

borrower's membership in a group of related counterparties bearing a common economic risk (defined pursuant to the laws); a list of legal entities that are members of the group of related counterparties bearing the common economic risk; the identification code in the Single state register of legal entities, sole proprietors, and nongovernmental organizations of every legal entity that is a member of the group of related counterparties bearing a common economic risk

data identifying the owners holding 10% and more of the authorized capital of a legal entity (for individual owners – full name, taxpayer's ID number or passport number and series/number of the ID card (for taxpayers who due to their religious beliefs refuse to have taxpayer's ID number and have the relevant stamp in their passport, place of registration; for corporate owners – the identification code in the Single state register of legal entities, sole proprietors, and nongovernmental organizations)

the fact of carrying out an audit of the borrower's financial statements or of consolidated/combined financial statements of the group that includes the borrower.

The list of information to be provided to the Credit Register by the DGF directly or by the DGF's authorized person in the event of delegating the DGF's powers to said person may be limited by separate regulations of the DGF upon the NBU's approval.

The procedure for providing/removing information to/from the Credit Register shall be defined by the NBU.

Banks and the DGF directly or by the DGF's authorized person in the event of delegating the DGF's powers to said person shall be obliged to provide information defined herein to the Credit Register as of the first day of the month following the reporting one. Information shall be provided to the Credit Register not later than on the eleventh day of the month following the reporting one. Information to be provided to the Credit Register by banks and by the DGF or the DGF's authorized person in the event of delegating the DGF's powers to said person, including information identifying the borrower, shall be processed with the aim of facilitating financial stability, carrying out banking supervision, and ensuring credit risk assessment by banks in order to protect interests of depositors and other creditors of banks in terms of realization of the government policy on the national security of Ukraine in the economic area.

When carrying out a lending operation and concluding a relevant agreement the bank shall be obliged to obtain the consent of the individual borrower to provide information to the Credit Register. A lack of such consent from the individual borrower will result in a refusal by the bank to conclude the agreement and carry out the lending operation. Banks shall provide information to the Credit Register without the need to obtain the consent of the corporate borrower, having informed the corporate borrower about this. Information about other related parties of the borrower, data about which the bank provides to the Credit Register pursuant to part three paragraph 5 of this Article, shall be transferred within the need to obtain the consent of such parties, and the borrower shall inform these parties about the transfer of data on them to the Credit Register. The borrower has the right to receive, on a free-of-charge basis, information about data on other related parties of the borrower, which were transferred to the Credit Register by the bank pursuant to part three of this Article.

The borrower and other entities whereon information is stored in the Credit Register (hereinafter in this Article referred to as the applicant) have the right to access the data on them and the data on requests for obtaining such data on them pursuant to the procedure prescribed by the data protection laws and the NBU regulations. The NBU shall be obliged, within five business days of the day the NBU receives the applicant's request, to provide the applicant with information from the Credit Register on the free-of-charge basis or to inform about a lack of information relating thereto in the Credit Register pursuant to the procedure prescribed by the NBU regulations.

In the event that the applicant does not agree with the information relating thereto in the Credit Register, the applicant has the right to submit a request to the NBU concerning correction or removal of the information from the Credit Register. In the event the NBU receives the applicant's request concerning correction or removal of the information related thereto from the Credit Register, the NBU shall mark accordingly the information about the borrower's lending operation for the period of information verification and, within five business days of the day it receives the request, apply to the bank that provided information to the Credit Register in order to ascertain the information, or to the DGF or to the DGF's authorized person in the event of delegating the DGF's powers to said person,

in the event that the information was provided by the bank with respect to which the NBU made a decision on declaring it insolvent or on revoking the banking license and liquidation.

The bank or the DGF or the DGF's authorized person in the event of delegating the DGF's powers to said person shall be obliged, within 15 business days of the day of the NBU's request, to transfer the verified information to the Credit Register or provide a substantiated refusal to make changes in the Credit Register. The NBU shall keep the information unchanged and lift the mark if the bank, the DGF, or the DGF's authorized person in the event of delegating the DGF's powers to said person, confirms the information denied. In this case, the applicant, pursuant to the procedure set forth by the NBU, has the right to include information concerning thereto in the Credit Register, in the amount not exceeding 100 words, with respect to the information being denied, and the NBU shall be obliged to include this commentaries in the information concerning the applicant.

The NBU, not later than on the twenty-first business day of the day the request is received, shall be obliged to inform the applicant about the update of the relevant information in the Credit Register and provide an extract from the Credit Register, which confirms the amendments. Notification shall be given to the applicant in writing in the case the applicant's request foresees no other form of notification.

If the bank or the DGF or the DGF's authorized person in the event of delegating the DGF's powers to said person, which gave information to the Credit Register, provides the substantiated refusal to make changes concerning the applicant in the Credit Register, the NBU shall furnish the applicant with a copy of this substantiated refusal. If the bank, the DGF, or the DGF's authorized person in the event of delegating the DGF's powers to said person failed to provide a response within the period set forth in this Article, the NBU shall remove or change the information denied by the applicant and inform the applicant about failure to provide the response. The applicant has the right to appeal to the court against action or omission of the bank, the DGF, or the DGF's authorized person in the event of delegating DGF's powers to said person.

The NBU pursuant to the procedure set by it shall provide the banks with access to information stored in the Credit Register about lending operations of the borrower whose total debt to one bank (principle and interest), according to the Credit Register data, is not less than 100 minimum monthly wages (or the equivalent in a foreign currency at the official NBU rate set at the first business day of the month following the reporting one). Such information about the borrowers (and/or their related parties) shall be provided to the bank exclusively if they are the borrowers (and/or related parties) of this bank, or there are documents that prove the entity's application concerning the intention to perform an asset operation with the bank, and comprise the following:

1) information identifying the borrower, including

for individuals – full name, date of birth, taxpayer's ID number or passport number and series/number of the ID card (for taxpayers who due to their religious believes refuse to have taxpayer's ID number and have the relevant stamp in their passport)

for legal entities – full name, ID number in the Single state register of legal entities, sole proprietors, and nongovernmental organizations

2) information on conditions of the lending operation and fulfilment of the obligations under the lending operation, including the following:

type of a loan/extended financial commitment

number of the loan agreement

date of the loan agreement

total loan amount/amount of the extended financial commitment according to the agreement

debt under the lending operation

currency of the commitment

maturity date for loan repayment/end date of the extended financial commitment according to the agreement

amount of the past due debt

delay in days

borrower class

borrower's comments on the information thereto in the Credit Register, with which the borrower disagrees (if available)

3) whether a borrower belongs to the bank's related parties

4) information on collateral for obligations under the lending operation, including suretyship (date of concluding the agreement on collateral for obligations under the lending operation; type of collateral)

5) other information on the corporate borrower, including:

type of borrower's economic activity; the period for which the economic activity was defined

borrower's membership in a group of legal entities under common control (defined pursuant to the laws); a list of legal entities that are members of the group of legal entities under common control, which shall be analyzed by the bank to define credit exposure; the identification code in the Single state register of legal entities, sole proprietors and nongovernmental organizations of every legal entity that is a member of the group of legal entities under common control; borrower's position in the group (a parent company or a member); a class of the group defined based on consolidated/combined financial statements

borrower's membership in a group of related counterparties bearing a common economic risk (defined pursuant to the laws); a list of legal entities that are members of the group of related counterparties bearing the common economic risk; the identification code in the Single state register of legal entities, sole proprietors, and nongovernmental organizations of every legal entity that is a member of the group of related counterparties bearing a common economic risk

data identifying the owners holding 10% and more of the authorized capital of a legal entity (for individual owners – full name, taxpayer's ID number or passport number and series/number of the ID card (for taxpayers who due to their religious beliefs refuse to have taxpayer's ID number and have the relevant stamp in their passport, place of registration; for corporate owners – the identification code in the Single state register of legal entities, sole proprietors, and nongovernmental organizations)

the fact of carrying out an audit of borrower's financial statements or of consolidated/combined financial statements of the group that includes the borrower.

The NBU shall use the information from the Credit Register to analyze the standing of the financial system with the aim of facilitating financial stability according to the NBU regulations, in particular, in compliance with the requirement for limitations on the use of information identifying the borrower or other entities.

The bank shall obtain the information from the Credit Register, which is nontransferable to third parties. The NBU has no right to transfer information from the Credit Register to third parties, except in cases specified herein.

The use of information from the Credit Register by banks and the NBU for the purposes other than those provided for by the laws is prohibited.

The Credit Register's information is stored for an unlimited term, aside from information about lending operations, liabilities on which were met in full or terminated. The information about lending operations, liabilities on which were met in full or terminated, shall be removed from the Credit

Register by the NBU according to the procedure set by it within 30 calendar days after receiving information from the bank on loan repayment or termination of its liabilities.

The NBU shall provide the banks with access to real-time data in the Credit Register on the free-of-charge basis.

## **Chapter 13. ACCOUNTING, REPORTING, AND AUDITING**

### **Article 68. General Principles of Accounting and Reporting in the Banks**

The banks are obliged to ensure accounting and issue financial statements under the [Law of Ukraine On Accounting and Financial Reporting in Ukraine](#) and the International Financial Reporting Standards.

The accounting shall ensure a timely and full reflection of all the banking operations and provide true information to users on the status of assets and liabilities, financial performance and changes therein.

### **Article 69. Reporting of Banks, Banking Groups**

Any bank is obliged to submit to the NBU its financial statements and statistical reporting on its activity, operations, liquidity, solvency, profitability as well as the information of its affiliates with the aim to assess the bank's financial standing.

A responsible person of the banking group is obliged to submit to the NBU the consolidated and subconsolidated reporting, as well as statistical reporting.

The NBU sets for the banks and banking groups: list, format of reports or requirements to the formats, regularity and terms of reporting submission, procedure for submission and publication of financial statements (annual financial statements, annual consolidated financial statements, interim financial statements, consolidated interim financial statements), consolidated and subconsolidated financial statements.

In certain cases the NBU is entitled to require the banks and banking groups to submit ad hoc and preliminary reporting.

Each owner of a qualifying holding in the bank, who is a legal entity, shall submit an annual report to the NBU within the defined term on its activity. The report shall contain the following information:

- 1) types of activity carried out by the legal entity
- 2) information on the economic entities, in which this legal entity's participation exceeds 10 percent, in particular: the name and address of the legal entity, size of the stake (share) owned by this person, and types of activity
- 3) balance sheet and income statement of that entity as at the end of the last fiscal year audited by external auditor (audit firm).

The NBU has the right to request the submission of other periodical reports, other documents or information from the bank's qualifying holding owners and key participants in the bank ownership structure, in order to supervise the security and stability of the bank's financial standing and to ensure the compliance with the provisions of this Law.

Any bank is obliged, not later than 30 April of the year following the reporting one, to publish the annual financial reporting and annual consolidated financial reporting together with the auditor's

report, as well as other information, in the scope defined by the NBU, by placing it on its website and through other means in the cases prescribed by the Ukrainian law.

The NBU is entitled to determine the list of other indicators and other information about bank's activities that are subject to disclosure.

The bank shall, on its own initiative or upon request of the NBU, during one month since the date of publication and/or detection of inaccurate financial statement, refute the published inaccurate financial reporting, annual consolidated financial statements, interim financial statements, consolidated interim financial statements, in the same way as it was distributed. The chairperson of the board and accountant-general of the bank shall be liable in accordance with the laws of Ukraine for publication of the corrupt (incomplete) financial reporting and violation of the procedure of denial of such reports.

The banking group responsible person is obliged to disclose the auditor's report and the annual consolidated reports of the banking group audited by an audit firm not later than on 1 June of the year following the reporting one, in the composition of the reporting and procedure determined by the NBU, through publishing them on its website and in any other manner as prescribed by the Ukrainian law.

### **Article 70. External Audit of Banks**

Each bank shall ensure the annual audit of financial statements, consolidated financial statements and other information on financial and economic activities by the auditor (audit firm) in accordance with the laws of Ukraine, including the NBU regulations.

The audit of banks may be entrusted to the audit firm that is listed in the Register of Auditors and Audit Practitioners maintained pursuant to the law, in the section comprising audit practitioners entitled to carry out the mandatory financial audit of the entities of public interest.

Both the bank and auditor shall submit to the NBU at its request the explanations, including in writing, concerning the external audit of the bank.

The NBU has the right to request the bank to broaden the audit scope according to the procedure and extent determined by the NBU regulations.

The bank shall have the right to enter into agreements on conducting an audit of the annual financial reports, consolidated financial statements and other information on its financial and commercial activities with the same audit firm for not more than seven consecutive years.

The bank shall, according to the procedure and requirements determined by the NBU regulations, submit to the NBU the auditor's report and other documents related to the audit.

Not later than on the next business day after becoming aware, the audit firm is obliged to notify the NBU in writing about violations of the banking law, significant threat to or doubts on the bank's ability to maintain business continuity, detected during the audit and/or provision of other audit services.

The bank's managers shall provide conditions for the external audit of the bank in compliance with the requirements of the laws of Ukraine and, at the auditor's request, submit the reports on inspections done by the NBU as well as those of the external and internal audit of the bank.

The auditor shall, at the request of the NBU, submit to the latter and authorized persons thereof the auditor's working documents related to the bank audit according to the procedure established by the NBU regulations.

The auditor shall not be responsible for disclosure of information to the NBU in the cases defined in this Article.

## **Chapter 14. BANK INSPECTIONS**

### **Article 71. Bank Inspections**

Each bank shall be a subject to inspections by the persons authorized by the NBU.

The inspections shall be performed with the purpose of identifying the level of safety and stability of the bank's operations, reliability of the bank's reporting and compliance with the Ukrainian laws on banks and banking and the NBU's regulations.

*{Article 71 part two in the wording of Law No. 1591-IX dated 30 June 2021 to come into effect on 1 August 2022}*

Any inspection shall be performed in accordance with the schedule, approved by the NBU. The scheduled inspection shall be conducted not more frequently than once a year. The NBU shall inform the bank of conducting the scheduled inspection not later than ten days prior to its beginning.

The banks shall ensure appropriate conditions for the bank inspection and free access to all premises of the bank in business hours to the persons authorized by the NBU to inspect the bank.

The bank managers and employees are obliged to ensure the free of charge access in a view mode of the NBU authorized persons to all information systems of the bank, as required to conduct the inspection, selection and upload of required information for further analysis, advise on any matters about the functioning of the systems, as well as information, documents, and written explanations on matters concerning the bank activities. The bank managers are obliged to ensure the free of charge provision to the NBU's authorized persons of the information, copies of documents, including those stored in the bank's information systems, according to the procedure prescribed by the NBU.

*{Article 71 part five in the wording of Law No. 1591-IX dated 30 June 2021 to come into effect on 1 August 2022}*

The NBU may take a decision to perform an unscheduled inspection of the bank, if sound grounds for doing so exist. Such a decision shall be signed by the NBU Governor or by a person authorized by the Governor.

The NBU's authorized persons are entitled to receive from the bank the information, documents and copies thereof, written explanations on bank activity issues, withdraw (carry out of the bank premises) written explanations, and make copies and withdraw (carry out of the bank premises) them, including those that testify to the violations of the Ukrainian law, including the NBU's regulations.

Inspection results may not be disclosed to third parties, except for the Household Deposit Guarantee Fund, if such reports contain no information about breaches of the law.

In the course of inspections of banks, the persons authorized by the NBU shall be entitled to inspect any reporting of any affiliate of the bank and any congenerous person thereof with regard to their relationships with the bank for the purpose of determining the effect of such relationship on the bank

position. For inspection purposes, the affiliates and congenerous persons of the bank shall facilitate the NBU efforts in line with this Article provisions and in the same manner as applied to the banks.

The NBU shall have the right to engage staff of the Deposit Guarantee Fund for inspections of a problem bank.

### **Article 72. Examinations and Inspections of Persons Subject to the NBU Supervision**

The NBU has the right to inspect the persons subject to the NBU supervision in order to check for the compliance with the legislation on banking activity. In the course of these inspections, the NBU has the right to demand any information from these persons needed for the inspection. The persons being inspected shall submit to the NBU the required information within the period of time defined by the NBU.

The owners of the bank's qualifying holding, key participants in the ownership structure of the bank, and participants of banking groups, nonbank financial groups where the banks are participants, banks' parent companies, legal entities that have the same controller as the banks, shall belong to the persons subject to inspections of the NBU.

Any person (entity) in respect of which there is information that they are engaged in banking without the banking license may also be subject to the NBU's inspection.

## **Chapter 14<sup>1</sup>. CORRECTIVE MEASURES**

### **Article 73. Corrective Measures**

In the event a bank or other persons (entities), whose activities the NBU is entitled to inspect under this Law, violate Ukrainian banking and currency laws, legislation on prevention and counteraction to legalization (laundering) of the proceeds from crime, terrorism financing and financing weapons of mass destruction, the NBU's regulations and the NBU requirements set forth according to [Articles 66](#) and [67](#) of the Law, perform risky activities that pose threats to the interests of depositors or other creditors, or if a bank or its qualifying shareholders are subjected by foreign states, intergovernmental unions or international institutions to sanctions, which pose a threat to the depositors or other creditors of the bank and/or banking system stability, or if a bank or other persons (entities) violate the statutory requirements for interaction with consumers when resolving past due debts (ethical conduct requirements), the NBU shall have the right to impose the following corrective measures that are adequate to the violation committed or the seriousness of the threats posed:

- 1) issue a written warning
- 2) call a general meeting of shareholders, a meeting of the Supervisory Board, and a meeting of the Bank's Board
- 3) entering into a written agreement with the bank under which the bank or the person (entity) assigned under the agreement undertakes to pay a defined monetary liability and/or take measures to eliminate and/or prevent further violations, improve the bank's financial standing, and enhance the efficiency of the bank's risk management system, etc. For failure to fulfil or improper fulfilment by the bank of the terms and conditions of the written agreement the NBU shall have the right to apply other corrective measures provided for in this part
- 4) suspend payment of dividends or the distribution of the capital in any other form



5) limitation, suspension or termination of certain types of transactions performed by the bank, including transactions with the bank's related parties

6) ban on granting unsecured loans

7) imposing fines on:

bank under the regulations approved by the NBU Board but only in an amount not more than one percent of the registered authorized capital. The above limitation of the maximum amount of the fine shall not apply in the event of the fine imposed on the bank for violation of the laws related to AML/CFT. The maximum fine for violation of the laws related to AML/CFT shall not exceed 7,950 thousand nontaxable minimum household incomes

owners of a qualifying holding in the bank for nonfulfillment of the undertaken obligations on provision of the required financial support to the bank under measures taken to bring a problem bank activities in compliance with the law in the amount from five to ten thousand of nontaxable minimum household incomes

a person that acquired or increased a qualifying holding in the bank with violations of the requirements of [Articles 34 and 34<sup>1</sup>](#) thereof regarding the procedure for purchase or increase of the qualifying holding in the bank, in the amount of up to 10 percent of:

the nominal value of the purchased shares (stakes) of the bank, if the person acquired or increased a direct qualifying holding in the bank

nominal value of shares (stakes) owned by shareholder (participant) of the bank through which the person acquired or increased a qualifying holding in the bank, if the person acquired or increased an indirect qualifying holding in the bank.

The fine for violation of the procedure for acquisition or increase of a qualifying holding in the bank shall be imposed on the person, which acquired or increased a qualifying holding in the bank or to any person in the bank ownership structure through which such person acquired or increased a qualifying holding in the bank.

8) temporary prohibition for the owner of a qualifying holding to use their voting rights until the violation is eliminated (temporary prohibition on voting rights)

9) requirement to the owner of a qualifying holding in the bank to alienate the shares (stakes) in the cases defined in Articles 34<sup>1</sup> and 34<sup>2</sup> thereof and part eight of this Article

10) suspending the bank's officer from his/her office

11) declaring the bank as the problem or insolvent bank

12) revoking the banking license and liquidation of the bank.

The decision to apply a specific corrective measure from the list of corrective measures specified in part one of this Article is the exclusive NBU competence set out in the law.

The NBU's decision to apply a corrective measure must contain the following:

information on the established circumstances (facts)

qualitative and quantitative assessments and conclusions of the NBU, including conclusions that there are signs of risky activities carried out by the bank, which threaten the interests of the bank's depositors and other creditors, and justification of application of a relevant corrective measure based on the established circumstances (facts)

information on the results of consideration of explanations/objections of the bank or other entity that was subject to the NBU's inspection and in relation to which such decision was made (if any).

In the event of consideration of issues on applying corrective measures the NBU shall invite, according to the procedure established by it, the authorized person(s) of the bank or other entity that has been subject to the NBU inspection and with respect to which the above decision is to be made, for giving explanations/objections.

Temporary prohibition on voting rights shall be applied through banning the use of the voting rights of:

a direct owner of a qualifying holding in the bank regarding the shares (stakes) of the bank

an indirect owner of a qualifying holding regarding the shares (stakes) belonging to the bank's shareholder (participant) through whom such person (entity) owns the qualifying holding in the bank.

Temporary prohibition on voting rights envisages a ban on a shareholder (participant) of the bank to vote at the general meeting of the bank and the right to participate in any manner in managing the bank. If the temporary prohibition on voting rights is applied, the NBU shall determine the amount of shares (stakes) under which the right is limited.

Temporary prohibition on voting rights may be applied in addition to other measures provided for by part one hereof.

If the temporary prohibition on voting rights is applied, the NBU shall determine the way and the timeframe for eliminating such violations. Provided the violation is not eliminated within the set timeframe, the NBU shall have the right to demand the alienation of the corresponding shares (stakes) of the bank.

If the temporary prohibition on voting rights and/or demand of the alienation of the corresponding shares (stakes) of the bank is applied, the NBU may prohibit to such person to increase their holding in this bank.

If the temporary prohibition on voting rights is applied, the voting right under the respective shares (stakes) of the bank and the right to participate in managing the bank, is transferred to the authorized person appointed by the NBU.

The NBU shall have no right to appoint the NBU official to be an authorized person, who is the related party of the bank where the NBU appoints an authorized person, the person who has or may have a real or potential conflict of interests, or if less than three years passed from the date of such person dismissal from the office, including from the office at the NBU, and/or the loss of the respective status.

The authorized person is obliged, during the whole period of their status validity, to meet the requirements set by this Law and the NBU regulations regarding the irreproachable business reputation.

Voting at the general meeting of participants in the bank or within other activities related to managing the bank, the authorized person is obliged to act in the best interest of qualified and sound management of the bank, advocating and protecting interests of the bank, its depositors and other

creditors, and to notify the NBU about decisions made/measures taken on the date they are made/taken.

The NBU shall have a right to task an authorized person in terms of voting during the general meeting of the bank, in particular, to provide them with the agenda of the general meeting, specifying the issues to be voted and the way (for/against) such issues should be voted, as well as instructions on engagement in managing the bank. During voting in the bank's participants general meeting and managing the bank, an authorized person shall act as prescribed by the respective tasks and instructions (if those are issued by the NBU). The authorized person's actions, if done in contrary to the NBU's tasks and instructions, related to the general meeting voting and managing the bank shall be deemed null and void.

The NBU shall send a copy of the decision made on the temporary prohibition/restoration of the voting right to the depository institution servicing securities account of the respective shareholder at the latest on the next business day following the decision-making.

Requirement to the owner of a qualifying holding in the bank regarding alienation of the shares (stakes) of the bank shall be implemented through:

for direct owner of a qualifying holding – alienation of the bank's shares (stakes) owned by the qualifying holder

for indirect owner of a qualifying holding – alienation of the bank's shares (stakes) owned by the shareholder (participant in bank) through which the person acquired or increased a qualifying holding in the bank, or in the share of the authorized capital (stakes) of legal entity through which such person acquired or increased a qualifying holding in the bank.

Sale of shares (stakes) of the bank upon demand of the NBU to the person intending to acquire a qualifying holding in the bank or increase in a qualifying holding to the levels envisaged by [Article 34 part one](#) herein shall be approved by the NBU; in the cases determined by the law, the concentration shall be also approved by the Antimonopoly Committee of Ukraine.

If owner of a qualifying holding in the bank fails to fulfil the requirements as to the alienation of the bank shares (stakes) within the period set by the NBU, the NBU shall file a suit with the court to force alienation of the bank shares (stakes).

The person suspended from the office or temporarily prohibited from using the voting right on the basis of the NBU decision, may be reinstated in office or in the voting rights upon remedying the violations found on the basis of the NBU decision or the court's ruling.

In the event of violation of the requirements of this Law, the NBU regulations, by the responsible person of a banking group, other banking group participants, their engagement in risky activities threatening the interests of depositors and other bank's creditors, existence of the banking group structure that makes the consolidated supervision impossible, the NBU is entitled to impose the corrective measures, adequate to the violation committed as prescribed in part one of this Article, and/or any of the listed below:

- 1) setting of the limits and restrictions for the banking group with regard to some types of operations and/or activities
- 2) prohibition to conduct transactions the parties whereof are the bank and other banking group participants
- 3) demand from the bank to alienate the holdings in the authorized capital of subsidiaries, associate companies being the banking group members, to terminate the agreements on the basis whereof, in

case of formal ownership absence, the decisive influence is exerted on the management and/or activities of these persons.

In the case of violation of the requirements of this Law or the NBU regulations by the nonbank financial institutions being the banking group members, the NBU is entitled to address the authorities supervising the activities of such entities with the request on application of adequate corrective measures to these entities.

#### **Article 74. Procedure for Applying Corrective Measures**

The procedure for applying the corrective measures specified in [Article 73](#) hereof, shall be set by the NBU regulations effective as of the moment of making the NBU decision to apply corrective measures.

The amounts of financial sanctions that are imposed on banks and other legal entities subject to supervision by the NBU shall be established by Ukrainian laws and the NBU regulations.

Corrective measures under [Article 73](#) hereof may be applied by the NBU within six months from the date of detection of the violation, but not later than three years from the date of its commitment.

Corrective measures for violation of the AML/CFT legislation may be applied by the NBU to banks and branches of foreign banks within six months from the date of detection of the violation, but no later than three years from the date of its commitment.

Decision of the NBU to apply a corrective measure in a form of a fine for the violations of law, envisaged by Article 73 part one hereof, shall be an enforcement document and enter into force from the date of its approval. In the case of failure to implement such decision within the timeframe set by the NBU, the NBU shall direct it to the state enforcement service for enforcement purposes.

Information about corrective measures applied to banks and branches of foreign banks for violation of the AML/CFT legislation shall be published on the official NBU website according to the procedures established by the law and NBU regulations.

### **Section V. PROBLEM AND INSOLVENT BANK LIQUIDATION**

#### **Chapter 15. REASONS FOR DECLARING A BANK A PROBLEM OR INSOLVENT BANK**

##### **Article 75. Declaring a Bank a Problem Bank**

The NBU shall be obligated to declare a bank a problem bank if there is at least one of the following reasons to do so:

1) *{Article 75 part one paragraph 1 is temporarily waived for the duration of martial law and for four months following its suspension or termination. See Section VII paragraph 13.}* The bank, within 30 consecutive calendar days, has committed a violation of the minimum level of the adequacy ratio of the regulatory capital and/or the common equity adequacy ratio set by the NBU regulations, which are calculated every decade – two times and more.

2) Article 75, part one, paragraph 2 was excluded.

3) Article 75, part one, paragraph 3 was excluded.

4) *{Article 75 part one paragraph 4 is temporarily waived for the duration of martial law and for four months following its suspension or termination. See Section VII paragraph 13.}* the bank, within 30 consecutive calendar days, has committed a violation of at least one of liquidity ratios, having lowered them below the minimum required level set by the NBU regulations, which are calculated as follows:

on the daily calculations – five times and more

every decade – two times and more

every month – once

5) Article 75, part one, paragraph 5 was excluded.

6) systemic submission and/or disclosure of unreliable information or reporting with the purpose of concealing the bank's real financial standing, including its operations with bank's related parties.

The NBU has the right to classify a bank as a problem bank for other valid reasons specified in its regulations.

The NBU has the right not to classify a bank as a problem bank, if the decision is made as mentioned in Article 76 [part three](#) of this Law.

The principle of bank secrecy shall be applied to decisions taken by the NBU to declare a bank a problem bank.

A problem bank shall be prohibited to use direct correspondent accounts in the domestic currency for payments. Payments shall be done exclusively through a correspondent account and/or escrow account with the NBU.

This norm shall not apply to the operations of fulfilling liabilities within international and domestic payment and settlement systems and operations with securities effected in compliance with the laws.

A problem bank shall be obligated, over a period not longer than 120 days, to align its activities with the applicable laws, including NBU regulations.

A problem bank shall be obligated, over a period not longer than seven business days, to notify the NBU of the actions to be taken to align its activities with the applicable laws, and at the request of the NBU, keep it informed of the progress achieved.

The NBU shall have the right to either declare that the bank's activities comply with the applicable laws, or declare the bank insolvent at any time within the period of 120 days from the date the bank was declared a problem bank.

The NBU is obliged, not later than 120 days from the date the bank was declared a problem bank, to either declare that the bank's activities comply with the applicable laws, or declare the bank insolvent.

### **Article 76. Declaring a Bank Insolvent**

The NBU shall be obliged to declare a bank insolvent if there is at least one of the following reasons to do so:

1) The bank has failed to align its activities with the applicable laws, including NBU regulations, after it was declared a problem bank, but not later than 120 after the declaration date.

2) *{Article 76 part one paragraph 2 is temporarily waived for the duration of martial law and for six months following its suspension or termination. See Section VII paragraph 13.}* The adequacy ratio of the regulatory capital, and/or common equity adequacy ratio has decreased by 50 and more percent from the minimum level set by the NBU regulations.

3) Article 76, part one, paragraph 3 was excluded.

4) Article 76, part one, paragraph 4 was excluded.

5) after being declared a problem bank, the bank has performed transactions (except for interest rate accrual on deposits, payment to bank clients of salaries, alimony, pensions, scholarship, other social and government transfers) and executed (re-executed) agreements, whereby the liabilities before individuals within the guaranteed redemption amount increase owing to reduced liabilities before the individuals exceeding the guaranteed redemption amount and/or liabilities before individuals not to be redeemed by the DGF, and/or liabilities before legal entities

6) the bank declared as a problem bank has failed to fulfill the orders or decisions of the NBU (including those related to applying corrective measures/sanctions) and/or requirements of the NBU to eliminate violations of the banking laws and the NBU regulations within the term specified by the NBU.

*{Article 76 part one paragraph 6 in the wording of Law No. 1591-IX dated 30 June 2021 to come into effect on 1 August 2022}*

The NBU shall have the right to declare a bank insolvent in the event that the bank, within the period established in the agreement or prescribed by laws of Ukraine, has not fulfilled its obligations to the depositors and other creditors due to insufficient funds.

The NBU shall have the right to make a decision on declaring the bank insolvent in the event of the repeated occurrence of grounds on which the bank had been declared a problem bank, if such grounds appeared within 60 days from the date the NBU made the decision to declare the activities of that bank classified as a problem bank to be compliant with the laws. Provisions of this part do not restrict the right or obligation of the NBU to make a decision on declaring the bank a problem or insolvent bank within the mentioned time period on the other grounds set forth in [Articles 75](#) and 76 of this Law.

The NBU, where there are grounds specified in part one of this Article, shall decide to declare the problem bank insolvent at any time regardless of the term of the bank's problem status.

The NBU, not later than the day following the day a bank was declared insolvent, shall do the following:

1) notify the bank, its shareholders, and the DGF of this decision, so that the DGF takes actions stipulated in the Law of Ukraine *On Households Deposit Guarantee System*, and inform the entities performing clearing activities of this decision

2) publish the full text of the decision and justification thereof on the NBU's official website, taking into account the requirements of the Law of Ukraine *On Personal Data Protection*, and submit it for publishing in the newspapers *Holos Ukrainy* or *Uriadovi Kuryer*. From the date of publication of the full text of the decision on the NBU's official website, the bank, its shareholders, depositors, other

creditors, and counteragents shall be deemed informed about the NBU's decision on declaring the bank insolvent.

The resolution procedure launched for an insolvent bank may not be halted/terminated, including in the event of recognizing as wrongful (illegal) and cancelling the NBU's and the DGF's individual acts that served as the grounds for the commencement of such a procedure.

The NBU shall not supervise the bank under a provisional administration or under liquidation, it shall only receive reports and information to the Credit Register, as appropriate.

The NBU shall supervise the bridge bank, established pursuant to part 18 of Article 42 of Law of Ukraine *On Households Deposit Guarantee System*, according to the NBU regulations.

The NBU shall resume supervising the bank on the day it receives the decision of the DGF on termination of powers of the DGF's curator due to bringing the bank's activities in compliance with the banking laws of Ukraine concerning compliance with capital and liquidity ratios. The NBU shall not carry out inspections of the bank with respect to the bank's compliance with the AML/CFT laws over the period of the temporary administration in the bank.

## **Chapter 16. BANK LIQUIDATION**

### **Article 77. Grounds for Revoking the Banking License and Liquidating the Bank**

A bank may be liquidated:

- 1) by a decision of its owners
- 2) if the NBU revokes the license on its initiative, or at the request of the DGF.

The NBU has the right to revoke the banking license if:

- 1) it has established that documents submitted by the bank to obtain a banking license contained false or misleading information
- 2) a bank has not effected any banking transaction within a year since the day it was issued a license
- 3) repeated breach by a bank of the AML/CFT and the proliferation of weapons of mass destruction laws is detected.

The NBU shall make a decision to revoke the banking license and liquidate the bank, at the request of the DGF, within five days from the day of receipt of the request.

The order of revoking the banking license of the bank that is being liquidated by a decision of its owners shall be determined in the NBU regulations.

The NBU, no later than the next day following the adoption of the decision on revocation of the banking license and bank liquidation, shall do the following:

- 1) inform the bank and its shareholders about the above decision and send the decision to the DGF and to the entities performing clearing activities
- 2) publish the full text of the decision and justification thereof on the official NBU website, taking into account the requirements of the [Law of Ukraine On Personal Data Protection](#), and submit it for publishing in the newspapers *Holos Ukrainy* or *Uriadovyi Kurier* From the date of publication of the

full text of the decision on the NBU's official website, the bank, its shareholders, depositors, other creditors, and counterparties shall be deemed informed about the NBU decision on revocation of the banking license and liquidation of the bank.

The DGF, on the day it received the NBU's decision to liquidate a bank, shall acquire the right of the bank's liquidator, and commence the procedure of its liquidation pursuant to the [Law of Ukraine On Household Deposit Guarantee System](#).

The liquidation procedure launched for the bank may not be halted/terminated, including in the event of recognizing as wrongful (illegal) and cancelling the NBU's and the DGF's individual acts that served as the grounds for the commencement of such a procedure.

The liquidation of a bank shall be deemed completed, and the bank as a legal entity shall be deemed liquidated, from the day a relevant entry was made into the Uniform State Register of Legal Entities, Sole Proprietors and Nongovernmental Organizations.

The NBU shall make an entry to the State Register of Banks that a bank has been liquidated on the basis of a report on performance of the liquidation procedure and a liquidation balance sheet made by the DGF.

### **Article 78. Voluntary Bank Liquidation by Shareholders**

Liquidation of bank by a decision of its owners shall be effected in accordance with the procedure provided in the laws on liquidation of entities unless the NBU has found reasons to declare the bank a problem or insolvent bank after receipt of the owners' decision on liquidation of their bank.

Owners of the bank shall have the right to start liquidation procedure by the decision of General Meeting of Shareholders only after the NBU has agreed upon it and the banking license has been revoked.

If the bank under voluntary liquidation has been declared by the NBU a problem bank or an insolvent bank, the NBU and the DGF shall apply to the bank measures stipulated by this Law and the Law of Ukraine *On Household Deposit Guarantee System*.

## **Section VI. CHALLENGING THE DECISIONS OF THE NATIONAL BANK OF UKRAINE**

### **Article 79. Challenging the NBU Decisions**

*(a certain provision of Article 79 part one, namely, "that are subject to supervision by the NBU" has been acknowledged to be in violation of the Constitution of Ukraine (to be unconstitutional) pursuant to Decision of the Constitutional Court of Ukraine No. 6-p(II)/2020 dated 26 June 2020)* Bank or other entities that are subject to supervision by the NBU shall have the right to appeal in court, through a procedure prescribed by law, against the decisions, actions or omissions by the NBU or its officials or employees.

Specifics of appealing against the NBU's decisions (individual acts) on declaring the bank insolvent, revocation of the bank's banking license, and the bank's liquidation are specified in the [Code of Administrative Court Procedure of Ukraine](#).

Recognition of an individual act as illegal and cancellation of the act referred to in part one of this Article, or of its selected provisions:

shall not restore the bank's position existing prior to the adoption of such act/decision, the bank's legal status, and the position/rights of the persons that were the bank's shareholders at the moment of the adoption of this act/decision



shall not be grounds for declaring void, ineffective, and unlawful and cancelling any decisions, deals or other actions/declaring unlawful omission, adoption, implementation or agreement of actions as part of resolving/liquidating the insolvent bank

shall not engender any rights of the persons that were the bank's shareholders at the moment of the adoption of this individual act/decision, save for the right to damages (compensation)

Application of the provisions of this Article and/or damages to the bank's shareholder(s) due to illegal (unlawful) declaring the bank insolvent, revocation of the bank's banking license, and the bank's liquidation, pursuant to Article 79<sup>1</sup> of this Law, shall not relieve the shareholder(s) from civil, administrative or criminal liability for their actions.

**Article 79<sup>1</sup>. Recovery of damages to the Bank's Shareholder due to Illegal (Unlawful) Declaring the Bank Insolvent, Revocation of the Bank's Banking License, and the Bank's Liquidation**

In the event of recognition of the NBU's decision (individual act) specified in part one of Article 79 of this Law as illegal (unlawful), the person that was the bank's shareholder at the moment of the adoption of this decision (individual act) shall have the right to damages caused by this decision (individual act) in the manner prescribed by law, taking into account the specifics established in this Article.

The burden of proving the inflicted damage and its extent rests with the bank's shareholder.

Compensation for the expectation loss shall be provided in the amount of income that the bank's shareholder could actually receive, save for the NBU's decision, and the decision (individual act) adopted by the NBU was the only and sufficient reason that deprived the shareholder of the possibility to receive it. The expectation loss shall be compensated solely in the event that it was not taken into account when assessing actual losses (shares value).

Actual losses shall be compensated in the amount of the value of the bank's shares on the day of the taking the NBU's decision on declaring the bank insolvent/revocation of the bank's banking license and the bank's liquidation (hereinafter referred to as the resolution day).

The value of the shares is defined in the amount that a buyer, who has all the necessary information and data, would pay on the resolution day for the bank's shares, taking into account the bank's future prospects, the bank's real financial position (including the bank's regulatory capital, liquidity, and assets quality), bank's business model and organizational chart, as well as market conditions and macroeconomic situation.

The value of the shares is estimated in the report on the bank's financial and economic activities, which is produced by the internationally acknowledged audit company that meets the criteria set by the NBU. Such assessment of the bank's financial and economic activities and of the shares value shall be prescribed by the court that considers the case on compensation for the inflicted damage.

The court shall entrust the NBU with responsibility for entering into agreement with the audit company defined by it to assess the bank's financial and economic activities and estimate the shares value.

The plaintiff shall be obliged to deposit the predetermined amount of losses related to carrying out assessment of the bank's financial and economic activities and shares value, in the court's deposit account.

The audit company's report of the bank's financial and economic activities may not be rejected.

The audit company's report of the bank's financial and economic activities shall be treated as opinion of expert examination prescribed in line with procedural laws of Ukraine. This report shall be published on the NBU's official website.

The value of the shares is estimated based on reasonable and realistic assessment in line with the international assessment standards, taking into account the specifics of banks operation (including requirements to the regulatory capital, compliance with which is necessary for continuation of the bank).

If on the resolution day the bank's financial standing as assessed by the audit company showed that the amount of the bank's liabilities exceeded the amount of the bank's assets, it is considered that the bank could not operate continuously (had no prospects to continue its operation), and there was no financial damage. If according to the findings of the audit/assessment it was established that the asset size exceeded the liability size, such excess shall not be sufficient to prove that the financial damage was inflicted.

The procedure for defining the shares value as well as the person that will carry out assessment shall not be subject to provisions of the [Law of Ukraine On Valuation of Property, Property Rights, and Professional Appraisal Activity](#) and [Article 8](#) of the [Law of Ukraine On Joint Stock Companies](#).

When assessing the bank's financial and economic activities as of the resolution day, information/data that are known as of the day of such assessment, including information/data obtained after the NBU's decision on declaring the bank insolvent/revoking the banking license/liquidating the bank has been made, shall be taken into account.

To analyze the bank's financial and economic activities as of the resolution day, the audit company shall apply International Financial Reporting Standards to banks.

If in order to stabilize the banking and financial systems, the laws introduced a special regime for the bank's restructuring or recapitalization for a limited period, the bank's compliance with such reduced regulatory requirements during this limited period as well as non-application of sanctions for violation of requirements to the regulatory capital and/or other requirements and indicators shall not be considered sufficient proof of the positive shares value.

To avoid unjust enrichment of the bank's shareholders as a result of taking into account financial support (liquidity, capital increase, guarantees, etc.) provided to the bank by the state (Cabinet of Ministers of Ukraine, National Bank of Ukraine, and Ministry of Finance of Ukraine) prior to/after the resolution day, appraisal of the shares should be based on the following assumptions:

- 1) On the resolution day, the bank must immediately pay/return any financial support, including stabilization loans, refinancing or other loans extended by the NBU as a lender of last resort, and the bank's financial position should be assessed taking into account the bank's financial losses incurred by it due to making such payments. If the bank would be forced to sell its assets to make the payments and in the absence of any other market indicators, adjustment coefficients for property/guarantees shall be applied to the value of these assets, which are acceptable to ensure the fulfilment of obligations on the repayments of credit provided for emergency liquidity assistance, as well as the procedure for their accounting, established by the NBU as of the resolution day.

- 2) After the resolution day, no liquidity support (except an access to the NBU standard instruments for liquidity regulation), capital increase, guarantees, programs for asset repurchases or other form of state support will be provided by government authorities (including the NBU and the DGF). If such support was provided de facto, the assessment of the bank's future prospects and indicators should be based on the assumption that such support has not been provided.

Any payment received by the bank's shareholder(s) in the course of the bank's liquidation or as a result of implementing the resolution plan, shall reduce the amount of actual losses by the relevant amount.

Compensation for damage shall be made exclusively in monetary terms. Compensation for damage in any other way, in particular, compensation in kind (transfer of a thing of the same kind and quality) shall not be allowed.

## **Section VII. FINAL PROVISIONS**

1. The present Law shall come into effect from the date of its publication.

The NBU shall have the right to set transitional terms for fulfillment of the provisions provided for by this Law, if this allows banks to comply with the requirements of this Law, these terms shall not exceed, however, the general deadlines envisaged by the present Law requirements.

Banks established during the period prior the effective date of this Law shall, within two years, bring their activities in compliance with this Law.

Within a year from the effective date of the present Law, the NBU shall re-issue licenses to the banks in line with the classification of operations provided for by this Law.

Provisions of the present Law shall apply to the bank establishment procedures, the granting of a license to perform bank operations initiated and not completed prior to the entry into effect of this Law.

A bank liquidation procedure initiated before the effective date of the present Law shall be completed pursuant to the rules set by this Law and the NBU regulations adopted in accordance with this Law.

2. Before legislation is brought in compliance with this Law, laws and regulations shall be applied to the extent they do not contradict this Law.

3. Within six months from the publication of this Law, the Cabinet of Ministers of Ukraine and the NBU shall:

prepare and submit to the Verkhovna Rada of Ukraine their proposals in respect of bringing laws of Ukraine in compliance with this Law

bring their regulations in compliance with this Law

ensure adoption of the regulations needed for the implementation of this Law

ensure that the ministries and other central government agencies bring their regulatory documents in compliance with this Law.

4. The following documents shall be declared null and void:

Law of Ukraine *On Banks and Banking* (Vidomosti Verkhovnoi Rady USSR, 1991, No. 25, p. 281; (Vidomosti Verkhovnoi Rady Ukrainy, 1992, No. 20, p. 276, No. 47, p. 644, No. 48, p. 656; 1993, No.10, p. 76, No. 11, p. 83, No. 19, p. 209, No. 24, p. 272, No. 26, p. 277, No. 29, p. 307, p. 308; 1994, No.12, p. 60, No. 27, p. 222; 1995, No.14, p. 90, p. 93, No. 21, p. 154; 1996, No.3, p. 11, No. 7, p. 28; 1997, No.3, p. 7, No. 4, p. 24, No. 8, p. 63; 1998, No.10, p. 36, No. 14, p. 61, No. 26, p. 149; 1999, No.37, p. 334, 2000, No.35, p. 282)

Section I, paragraph 11 of the Law of Ukraine *On Amendments to Certain Laws of Ukraine due to Adoption of the Laws of Ukraine 'On the State Enforcement Agency' and 'On the Enforcement Procedures'* No. 2056-III of 19 October 2000

Article 62 of the Law of Ukraine *On the National Bank of Ukraine* (Vidomosti Verkhovnoi Rady Ukrainy, 1999, No. 29, p. 238; 2000, No. 42, p. 351)

Resolution of the Verkhovna Rada of Ukraine *On the Procedure to Enact the Law of Ukraine 'On Banks and Banking'* (Vidomosti Verkhovnoi Rady USSR, 1991, No. 25, p. 282; Vidomosti Verkhovnoi Rady Ukrainy, 1994, No. 52, p. 467).

5. While the Law of Ukraine *On Financial Restructuring* is in effect, Article 62 hereof shall be applied taking into account that, in accordance with the Law of Ukraine *On Financial Restructuring*, the banks participating in the financial restructuring procedure are allowed to disclose information that includes bank secrets with regard to a debtor, its surety (property guarantor) and debtor's related parties, without their consent, to other participants of the financial restructuring and to the bodies facilitating the financial restructuring procedure (supervisory board, secretariat, arbitration committee (arbitrator)).

6. For the term of validity of the Restructuring Plans approved in accordance with the Law of Ukraine *On Financial Restructuring*, the NBU shall not apply corrective measures for the failure to maintain the following ratios and limits: short-term liquidity ratio, single counterparty exposure limit, investment ratio and FX position limit, if this failure is a result of bank's participation in accordance with the Law of Ukraine *On Financial Restructuring* in financial restructuring procedure.

7. Section VII, paragraph 7 was excluded.

8. When restructuring debtor's liabilities in accordance with the Law of Ukraine *On Financial Restructuring*, a bank may set interest rates and commission fees at the level lower than the cost of banking services in the bank.

9. During the period of introducing the measures on prevention of development and spread of epidemics and pandemics of the coronavirus disease (COVID-19), it is prohibited to raise the interest rate under the loan agreement.

10. Temporarily, in the context of measures aimed at preventing the development and spread of the coronavirus disease (COVID-19), the provisions of [Article 69](#) of this Law concerning the timeframe for publishing the bank's annual financial statements and annual consolidated financial statements, including the auditor's report, for 2019 do not apply in 2020. These statements may be published before 30 April 2020, and after this date, they shall be published within the timeframe established by Section VII [paragraph 7](#) of the Law of Ukraine *On Securities and Stock Market*.

11. Temporarily, in the context of measures aimed at preventing the development and spread of the coronavirus disease (COVID-19), the provisions of [Article 69](#) of this Law concerning the timeframe for publishing the annual consolidated financial statements, including the auditor's report, of the banking group for 2019 do not apply in 2020. These statements may be published by the authorized person of the banking group before 1 June 2020, and after this date, they shall be published within 30 business days after publishing the bank's annual financial statements and annual consolidated financial statements, including the auditor's report, for 2019.

12. Temporarily, during the period of a single (special) voluntary declaring defined in [subsection 9<sup>4</sup>](#) Peculiarities of Application of a Single (Special) Voluntary Declaring of the Individuals' Assets of Section XX Transitional Provisions of the Tax Code of Ukraine, a bank (the authorized bank of Ukraine) is entitled to provide banking services on opening and keeping the current accounts with the

special use regime for the purposes of a single (special) voluntary declaring according to the procedure set in [subsection 9<sup>4</sup>](#) Peculiarities of Application of a Single (Special) Voluntary Declaring of the Individuals' Assets of Section XX Transitional Provisions of the Tax Code of Ukraine.

13. The following provisions must temporarily be waived under martial law imposed in Ukraine by Presidential Decree No. 64/2022 *On Introducing Martial Law in Ukraine* dated 24 February 2022 approved by Law of Ukraine No. 2102-IX *On Approval of the Presidential Decree On Introducing Martial Law in Ukraine* dated 24 February 2022:

Article 49 part seven of this Law for the duration of martial law

Article 75 part one paragraphs 1 and 4 for the duration of martial law and for four months following its suspension or termination

Article 76 part one paragraph 2 of this Law for the duration of martial law and for six months following its suspension or termination.

**President of Ukraine**

**Kyiv**

**7 December 2000**

**No. 2121-III**

**Leonid Kuchma**