



# **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 stable development and operation of banks in Ukraine, to create an appropriate competitive environment in the financial market, to protect legitimate interests of bank depositors and clients, introduce favorable conditions for the development of the economy of Ukraine, and support the domestic commodity producers.

#### **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, that has an exclusive right, under the NBU license, to render the banking services and is included in the State Register of Banks.

**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.

The company shall be deemed the one for which financial services is a predominant activity, if the revenues from the sale of financial services according to the results of previous year makes 50 percent and more of the total net income amount (revenues) from sale of products (goods, works, services).

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 document issued by the NBU in accordance with the procedure and subject to the conditions specified hereunder, that grants banks and branches of foreign banks the right 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.

**State Register of Banks** shall mean the register maintained by the NBU that contains information about state registration of all banks.

**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.

**Capital of a Bank** shall mean the capital base, 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 Legal Entity** shall mean any individual who owns equity rights of the legal entity, as well as a legal entity that owns two or more percent of the equity rights of 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 twenty individuals own the equal bundles of equity rights of a legal entity, all the individuals owning two and more percent of the equity rights of legal entity shall be considered as key participants.

3) It is deemed that a listed company has no key participants.

**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, where among subsidiaries and/or associated companies there is a bank and/or nonbank financial institution, and which is not a subsidiary of other Ukrainian bank or bank holding company.

**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.

**Listed Company** shall mean foreign legal entity established in the form of a public joint stock company the shares whereof are on the lists (have passed listing procedures) of the stock exchanges that meet the criteria set by the NBU.

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

**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 listed 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, 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”, and “financial services consumer” shall have the meaning as per the Law of Ukraine *On Financial Services and State Regulation of the Financial Services Markets*.

The terms “underwriter” and “underwriting” shall have the meaning as per the Law of Ukraine *On Securities and Stock Market*.

### **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 a SIB and a bank that has the status of the Settlement Center for the financial markets contracts 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.

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.

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

The members of the supervisory board shall meet the requirements to bank's top managers, which are 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, within the last five years, was a top manager of this SOB (except an independent member of the supervisory board) and/or its branch, representative office, and/or other standalone unit or 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 of the 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 a qualifying holder, 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 (except the member of the board of a bank in which the state holds more than 50% of the authorized capital).

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 of this SOB (except a member of the supervisory board) or of its affiliate, branch, representative office and/or other standalone subdivision.

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

3) The person is a connected person with the persons specified in paragraphs 1–2 of this part, 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](#)).

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 for 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 competence of the supervisory board shall cover decision-making on the issues stipulated by Article 39, part six 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 in case the member of the supervisory board inappropriately performs his/her official duties or does not meet the requirements on fitness and property
- 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 executive body of the bank performing the day to day management of the SOB is the SOB board. A chairman 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. Candidates to the positions of a chairman and members of the SOB board shall be appointed based on results of a competitive selection pursuant to the procedure specified by the supervisory board. 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 specified by the SOB charter and regulation on the

SOB board. The members of the SOB board shall conscientiously perform their duties, inure to the benefit of the SOB, and avoid the conflict of interest. The chairman and members of the SOB board shall meet the requirements of this Law and NBU regulations on fitness and propriety.

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 at least of two financial institutions and oversee them on the basis of sub-consolidated supervision.

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

The NBU is entitled to set requirements to the banking group and/or banking subgroup on the consolidated and sub-consolidated basis regarding:

- 1) availability of an efficient system of the corporate governance
- 2) availability of an efficient system of the risk management
- 3) availability of an efficient system of the internal controls
- 4) availability of the accounting procedures, information systems necessary to ensure compliance with the requirements on consolidated basis

- 5) compilation and procedure of submittal of the consolidated and sub-consolidated reporting
- 6) adequacy of the regulatory capital
- 7) economic ratios
- 8) limits and restrictions regarding certain types of activities, including with regard to the activities in the territory of other countries
- 9) procedure of submittal of necessary reporting and data.

An entity or individual intending to become the controller of a banking group shall, via its/his/her 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.

The banking group, subgroup, its participants shall meet the requirements established by the NBU in accordance with this Law.

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

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

The banking group shall choose among its participants a responsible person of the banking group 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 the parent bank, the parent bank shall be a responsible person.

Approval of the responsible person of the banking group by the NBU shall be done on the basis of the petition that shall contain rationale behind such person appointment together with other documents determined by the NBU.

Before the approval of the banking group responsible person by the NBU or in case the latter has decided that the responsible person appointed by the banking group is unable to exercise the responsible person's 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 calendar days after a change in its ownership structure or activity types, inform thereof the banking group responsible person.

The banking group responsible person shall inform the NBU about the changes of the banking group ownership structure and participants' activity types not later than 30 calendar days after such changes occur.

The banking group responsible person shall ensure meeting by the banking group the requirements established by the NBU in accordance with this Law.

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

The banking group participants shall submit to the banking group responsible person 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 an entity that is not a financial institution shall not exceed 15 percent of the consolidated 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 entities that are not financial institutions shall not exceed 60 percent of the consolidated regulatory capital of the banking group.

The amount of banking group participants' contributions to the capital of an insurance company (insurance companies) shall not be included in the banking group regulatory capital.

The NBU shall control the transactions between the banking group participants.

The NBU shall control the transactions between the banking group participants and their related parties that are not financial institutions. The total amount of the transactions, generating the credit risk, between the banking group participants and their related parties that are not financial institutions shall not exceed 20 percent of the consolidated authorized capital of the banking group. The total amount of the transactions, generating the credit risk, between the banking group participants and a related party of the banking group that is not a financial institution shall not exceed 5 percent of the consolidated authorized capital of the banking group.

List of the transactions generating the credit risk shall be determined by the NBU regulations.

Each banking group participant shall ensure annual audit of the annual financial reporting by an external auditor (audit firm). The banking group responsible person shall ensure annual audit of the annual consolidated reporting of the banking group by an external auditor (audit firm).

The auditor (audit firm) engaged in the audit of the annual financial reporting of a banking group participant, of the annual consolidated reporting of the banking group shall notify the NBU of material distortions in financial statements indicators, violations and operational deficiencies detected during the audit and provision of other audit services, as well as of any other events which could materially influence the solvency, security and reliability of a banking group participant or the banking group as a whole in three days after such events or facts are detected.

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

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 and abbreviated official names in Ukrainian and in 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 shall have a seal with its full official 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 be drawn up with taking into account the provisions of the Civil Code of Ukraine, Commercial Code of Ukraine, the present Law and other laws of Ukraine.

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

- 1) name (both full and abbreviated) of the bank
- 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, type of the bank shares, their face value, form of share issuance (documentary or non-documentary), number of shares to be bought by the shareholders
- 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.

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.

Documents on the amendments to the bank charter shall be approved by the NBU before submittal for the state registration.

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. State Registration of the Legal Entity Intending to Engage in Banking**

The state registration of a legal entity intending to engage itself in banking shall be carried out 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.

A person authorized by the founder shall submit the documents for the state registration of the legal entity intending to engage in banking after approval of the charter of this entity by the NBU.

A person authorized by the founder of the legal entity intending to engage 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 to draw a conclusion about:

the business reputation of the founder, if the latter is a legal entity, then also that 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 in banking is likely to be exercised

the financial standing of the founding entity as well as the property status of the founding individual

whether the founder 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 made by the Antimonopoly Committee of Ukraine, as provided by the applicable 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 of the legal entity intending to engage in banking, for the approval of the charter thereof, shall submit to the NBU additionally the documents prescribed by the ninth part of Article 34 hereof about the founders being foreign legal entities and by the eleventh part of Article 34 hereof about the founders being foreign individuals. The documents submitted in accordance with the present part shall be executed with taking into account the requirements of the twelfth and thirteenth parts of Article 34 hereof.

The decision on approval or denial of the bank charter shall be taken by the NBU not later than within three months from the moment the full package of documents stipulated hereby is submitted. The NBU shall make the decision with taking into consideration the requirements of the fourteenth part of Article 34 hereof.

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

The founder of the legal entity intending to engage in banking is prohibited from alienating the shares he/she has or imposing liabilities thereon before the legal entity in question obtains the banking license.

The legal entity may obtain the status of a bank and rights to engage itself in banking only after receipt of the banking license and entry of the information about this entity into the State Register of Banks.

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 provided:

- 1) an incomplete package of the documents necessary for the charter approval has been submitted
- 2) the documents contain corrupt data
- 3) the documents do not meet the requirements of the Ukrainian laws in effect or NBU regulations

4) the business reputation of the founder, for the founder being a legal entity also that of its executive board and/or supervisory board members, and all persons through which indirect ownership of the qualifying holding in the bank is likely to be exercised, does not meet the requirements set forth by the NBU

5) the financial standing of the legal entity being the founder and/or the property status of the individual being the founder do not meet the requirements set forth by the NBU

6) the founder has not enough own funds to make the declared contribution to the authorized capital

7) the pattern of ownership of the legal entity intending to engage itself in banking and/or the founder obtaining the qualifying holding therein does not meet the transparency requirements set forth by the NBU

8) the documents confirming availability of the paid-in authorized capital of the legal entity intending to engage in banking have not been submitted.

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 to the NBU together with the banking license application the following documents:

1) Article 19, part 2, paragraph 1 was excluded.

2) a copy of the charter with the State Registrar's notation of the state registration of the legal entity

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 the bank established as a public joint stock company

4) information on the number of members of the supervisory board, board, and revision committee

5) the data according to the form established by the NBU that allows to draw a conclusion about:

availability of at least three persons, appointed members of the board, including the board chairperson, their fitness and propriety

professional skills of the chief accountant and the head of internal audit

business reputation of the supervisory board members, chief accountant and the head of internal audit

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

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 submit at the same time to the NBU all the documents and information stipulated by the present Law.

The decision to grant or to deny the banking license shall be taken by the NBU within two months from the day it has received the full package of the documents as specified herein. In case of bank reorganization on the basis of provisional administration results the decision on granting the banking license shall be taken by the NBU within three days after receipt of the full package of the documents specified herein.

The NBU shall enter the data on the legal entity into the State Register of Banks simultaneously with taking the decision on granting the banking license.

No bank is entitled to transfer its banking license to third parties.

The managers of the bank and the persons with the qualifying holding therein shall meet, during all the time they retain their status in the bank or have the qualifying holding therein, the requirements stipulated by the present Law.

### **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 provided:

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 corrupt data

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) the fitness and/or propriety of at least one manager of the legal entity intending to engage itself in banking and/or of the head of the internal audit thereof do not meet the requirements established by the NBU

6) less than three persons have been appointed members of the board, including the board chairperson

7) the banking equipment, computers, software, premises meeting the NBU requirements are absent.

The NBU is entitled to refuse to grant the banking license to the legal entity intending to engage itself in banking, if the founders thereof have not met the requirements of the seventh part of Article 17 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 the first part of Article 19 hereof during one year from the state registration date.

**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, if it is not inconsistent with the requirements for establishing standalone units imposed by NBU regulations.

The bank shall inform the NBU of establishment of such a standalone unit.

The NBU shall include the information on bank standalone units to 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.

In the notification of establishment of a standalone unit that is to operate on behalf of the bank the latter shall indicate:

- 1) intrabank registration code of the standalone unit
- 2) full name of the standalone unit
- 3) its place of location
- 4) surname, name and patronymic (if applicable) of the standalone unit's CEO
- 5) volume and types of activities to be performed by the standalone unit
- 6) information of the decision of the bank's authorized body on the establishment of such a unit
- 7) the number and approval date of the standing orders of the bank's standalone unit
- 8) written assurance of compliance of the standalone unit with the requirements imposed by this Law and by NBU regulations, including those to the premises and equipment of the bank standalone unit and professional qualification and business reputation of the managers thereof.

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 subdivision furnished by the bank comprises untrue data or if activity of such a standalone unit fails to meet the requirements of this Law and NBU regulations.

The notification about establishment of the separate subdivision that is to exercise functions of the representative office and protect the bank's interests shall be supplemented by the following documents:

- 1) decision of the bank's authorized body on establishment of the representative office
- 2) Representative Office Regulation approved by the authorized body of the bank.

The bank is obliged to inform the NBU about changes in the documents and data submitted to meet this Article requirements and to send to the NBU a copy of its decision on amending the Regulation of a standalone unit within two weeks after approval thereof by the authorized body of the bank.

The bank shall inform the NBU on the decision taken by the bank's authorized body to close a standalone unit within seven days after adoption of such a decision and within three days the bank shall inform about the actual termination of the unit operation.

#### **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 complies with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision
- 3) the NBU and the supervisory authority of the country where the foreign bank has been registered have signed an Agreement on Cooperation in Banking Supervision, Harmonization of its Principles and Terms
- 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 the foreign bank branch shall be effected by means of an appropriate entry in the State Register of Banks and by granting the banking license.

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's 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 of the branch approved by the authorized body of the foreign bank
- 5) information about fitness and propriety of the manager and chief accountant of the foreign bank's branch
- 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's branch on the following grounds:

- 1) the documents submitted are non-compliant with the requirements of this Law and NBU regulations
- 2) premises and equipment of the branch do not meet the requirements of the NBU
- 3) candidates for the positions of the manager and chief accountant of the branch do not meet the fitness and propriety requirements of this Law and NBU regulations
- 4) financial or legal problems have been detected in activity of the foreign bank, which might have negative consequences for clients or potential clients of the bank as a result of establishment of the branch.

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, in case the bank has not met the requirements of the NBU regulations regarding the establishment of subsidiaries, branches or representative offices of banks in Ukraine as well as in case the banking supervision in the country in question does not comply with the Core Principles of Banking Supervision of the Basel Committee on Banking Supervision.

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 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 on companies (business partnerships) 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 regarding economic ratios, bank registration and licensing procedure.

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 board composition 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 of the authorized capital and bank capitalization 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 hryvnias, whereas nonresidents may pay the contributions in a foreign fully convertible currency or in hryvnias.

The authorized capital of a bank shall not be formed from unverified sources.

The legal entity intending to engage itself in banking, before receipt of the banking license and entry of the data on it into the State Register of Banks, is entitled to spend the funds contributed by the founders 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, State Registrar, and National Securities and Stock Market Commission shall be determined in accordance with an incoming stamp of the respective public authority (registration index).

Antimonopoly Committee of Ukraine, in cases specified in part seventh 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 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 may offer its shares to the first owners directly or through underwriters. 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**

A legal entity or an individual 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 three months prior to the acquisition or increase of the qualifying holding (except for strategic investors applying for the competition according to 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 entities listed in Part 1 of the Article shall be required to furnish the NBU, along with the notification, with a complete set of the documents specified by this Law and NBU regulations.

The NBU shall consider the documents specified in the Article within three months from the day of receipt of the complete set of the appropriate documents (except for strategic investors applying for the competition according to the [Law of Ukraine On Specifics of Sales of Stakes Owned by the State in the Authorized Capital of Banks the State Participated in](#)). If the bank mentioned in the first part of this Article holds a license as a stock 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 such bank.

The NBU shall communicate (send) decisions to prohibit the relevant entity from acquiring or increasing the qualifying holding in a bank and the rationale behind the prohibition.

In the event that the NBU has not informed the relevant entity of its decision to prohibit it from acquiring or increasing the qualifying holding in a bank within the time limit applicable under part 3 of the Article, the acquisition or increase shall be deemed approved.

The entities listed in part 1 of the Article shall be required to notify the bank of the approval given by the NBU to acquire or increase the qualifying holding in the bank and provide information about their ownership structure and the percentage of qualifying holding in the bank.

A legal entity or individual intending to transfer its qualifying holding in a bank to any other entity or individual or to decrease the holding so that its percentage in the bank's authorized capital or its voting right would be lower than the levels envisaged in Part 1 of the Article, or to transfer control of the bank to another entity shall be required to notify thereof, as applicable, both the bank and the NBU.

A legal entity intending to acquire or increase the qualifying holding in a bank shall be required to furnish, as applicable, both the bank and the NBU with:



1) the documents specified by the NBU which confirm that the legal entity intending to increase its qualifying holding in a bank has a qualifying holding in the bank

2) the documents specified by the NBU to establish:

the business reputation of the legal entity, its executive board and supervisory board members, entities that have a qualifying holding and all entities through which indirect ownership and/or control of the qualifying holding in the bank are likely to be executed

the financial standing of the said entity

whether the entity has enough own funds to make the intended contribution to the bank's authorized capital, sources of such funds

3) copies of the documents specified by the NBU required to verify the identity of the legal entity and all other entities through which indirect ownership and/or control of the qualifying holding in the bank are likely to be executed

4) information about its pattern of ownership according to the requirements of the NBU

5) a conclusion made by the Antimonopoly Committee of Ukraine, as provided by the applicable Ukrainian laws.

A foreign legal entity intending to acquire or increase the qualifying holding in a bank shall be required to additionally furnish the NBU with the following documents:

1) a copy of the decision made by the authorized management body of the foreign legal entity in relation to the holding in a Ukrainian bank

2) a written permit to have a holding in a Ukrainian bank granted to the foreign legal entity by the authorized control agency in the country where the head office of the foreign legal entity has been registered, if the laws in effect in that country require that such a permit be obtained, or written assurance of the said foreign legal entity that the laws in effect in that country do not require that such a permit be obtained

3) an excerpt from the trade, banking or court registry or any other official document which confirms the registration of the foreign legal entity in the country where its head office has been registered

4) a copy of the auditor's report produced by a foreign auditor confirmed by a Ukrainian audit firm on the financial standing of the foreign legal entity as of the end of the last complete calendar year.

An individual intending to acquire or increase the qualifying holding in a bank shall be required to furnish, as applicable, both the bank and the NBU with:

1) the documents, specified by the NBU, which confirm that the individual intending to increase his/her qualifying holding in a bank has a qualifying holding in the bank

2) the documents, specified by the NBU, to establish the business reputation of the individual and all persons through which indirect ownership of the qualifying holding in the bank is likely to be exercised

3) the documents, specified by the NBU, to establish the property status of the individual and all persons through which indirect ownership of the qualifying holding in the bank is likely to be exercised

3<sup>1</sup>) the documents, specified by the NBU, to establish the sources of the funds used by an individual to acquire or increase the qualifying holding in a bank

4) copies of the documents required to verify the identity of the individual and all other persons through which indirect ownership and/or control of the qualifying holding in the bank are likely to be exercised

5) information to be provided under the form developed by the NBU on the associated persons of the individual

6) the information to be provided under the form developed by the NBU on the legal entities where the individual in question is a manager and/or controller.

A foreign individual intending to acquire or increase the qualifying holding in a bank shall additionally furnish the NBU with a written permit to have a holding in a Ukrainian bank granted by the authorized control agency in the country where the person has permanent residence, if the laws in effect in that country require that such a permit be obtained, or written assurance that the laws in effect in that country do not require that such a permit be obtained.

The documents which are listed in this Article and to be submitted by the foreign legal entity and the foreign individual shall be notarized in the country in which they have been issued and legalized, as applicable, unless otherwise specified by the international treaties ratified by the Verkhovna Rada of Ukraine.

In case the documents listed in this Article are written in a foreign language, they shall be supplemented with a notarized translation into Ukrainian.

The NBU shall approve the acquisition or increase of the qualifying holding by a foreign legal entity and individual provided that:

1) country where the foreign entity has been registered (has permanent residence) adequately complies with the international anti-money laundering and anti-terrorism financing standards

2) banking supervision in the country where the foreign entity has been registered (has permanent residence) adheres to the Core Principles of Banking Supervision of the Basel Committee on Banking Supervision based on assessments made by the relevant international authorities.

3) Article 34, part one, paragraph 3 was excluded.

The NBU shall have the right to prohibit a legal entity or an individual from acquiring or increasing a qualifying holding in a bank in the event:

1) incomplete set of documents has been submitted, or the documents provide inadequate information, or do not meet the requirements of the Ukrainian laws in effect or NBU regulations

2) business reputation of the entity, for the legal entity also that of its executive board and/or supervisory board members, entities that have a qualifying holding in it and all entities through which indirect ownership and/or control of the qualifying holding in the bank are likely to be executed does not meet the impeccability requirements set by the NBU

- 3) financial standing of the legal entity and/or the property status of the individual and all other persons through which indirect ownership on the qualifying holding in the bank is likely to be exercised does not meet the requirements set by the NBU
- 4) entity has no own funds to acquire or increase the qualifying holding in a bank
- 5) acquisition or increase of the qualifying holding in a bank by the entity threatens the interests of depositors and other creditors of the bank or runs counter to the Ukrainian anti-monopoly laws
- 6) pattern of ownership of the legal entity does not meet the transparency requirements set by the NBU.

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 approval of the acquisition or increase is allowed ex post facto. In cases specified by the NBU, an entity/individual 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. To obtain an ex post facto approval of acquisition or increase in a qualifying holding in a bank an entity/individual shall submit documents listed in this Article as required from the entities/individuals intending to acquire or increase a qualifying holding in a bank. Pending the decision on approval, the NBU may suspend such entity/individual from exercise of the voting rights deriving from respective shares. The NBU has the right to deny an ex post facto approval of acquisition or increase in a qualifying holding in a bank on grounds defined in part fifteen of this Article.

A legal entity that has a qualifying holding in a bank shall be required to notify, as applicable, the NBU of all changes to its pattern of ownership and also to furnish it with information about the business reputation of its newly appointed managers within a month of the date on which the said changes occur.

An individual that has a qualifying holding in a bank shall be required to notify, as applicable, the NBU of all changes to the information it is required to furnish under this Article.

The NBU shall have the right to establish whether there is a significant or decisive influence on the management or activities of the legal entity.

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

The bank and each owner of a qualifying holding in the bank shall maintain the regulatory capital adequacy ratio at a level established by the NBU.

The NBU has the right to set a minimum ratio of the core capital to the total assets.

The NBU also has the right to set a minimum ratio of the regulatory capital to the total liabilities of the bank.

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, may determine the minimum size of the regulatory capital of the bank, minimum value and calculation procedure for the regulatory capital adequacy ratio, the ratio of the regulatory capital to the total assets and the ratio of the regulatory capital to liabilities of the bank.

The bank shall submit to the NBU the action plan for recovery of the regulatory capital level, should the level have decreased to the minimum determined by the NBU. The action plan shall be submitted

by the bank during 10 days after the decrease of the regulatory capital level is discovered and determine the procedure and deadlines of the measures to be taken.

The bank shall be prohibited from paying dividends or distributing capital in any other way, if such payments or distributions result in a violation of the regulatory capital adequacy ratio and/or core capital adequacy ratio.

The bank is entitled to pay dividends once a year on the basis of the calendar year results at the expense of the reporting year profits that remain available for the bank. The bank shall pay the dividends in accordance with the procedure prescribed by the bank charter.

### **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 and reserves to cover losses in assets 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 Shareholders which decides on all the issues of the bank's activity.

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

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

The distribution of responsibilities between governing bodies of the bank shall ensure an effective system of internal control.

In order to be efficient the internal controls of a bank shall include:

- 1) management control over compliance with the legislation of Ukraine and internal procedures of the bank
- 2) distribution of responsibilities when performing bank's activity
- 3) control of the risk management system
- 4) control of information security and exchange of information

- 5) internal control procedures
- 6) internal control system monitoring
- 7) internal audit procedures.

The members of Supervisory Board and bank's board are also responsible for bank's activity within their competence.

The members of Supervisory Board and bank's board shall be obliged to refuse to participate in taking decisions if a conflict of interest does not allow them to fully perform their duties in the interests of the bank, its investors and participants.

### **Article 38. General Meeting of Bank's Shareholders**

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

If in accordance with Article 39 hereof the Supervisory Board decides to present any issue belonging in accordance with the law or charter to the exclusive competence of the Supervisory Board for the consideration of general meeting of bank's shareholders, the general meeting of bank's shareholders has 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 bank's shareholders (single bank shareholder) shall be made void, if it has been taken with making use of the voting rights of the shares (stakes) held or controlled by the persons whom the NBU, in the manner prescribed by this Law, has incapacitated from voting under the shares (stakes) above.

### **Article 39. Supervisory Board**

Supervisory Board may include independent members (hereinafter - 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, or provide services to the bank based on civil law contracts.

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

The independent directors shall comply with the requirements set by the law for the independent directors of a joint stock company. The NBU has the right to set additional requirements to the independent directors of a bank. Bank shall ensure compliance of the independent directors with the requirement as to their independence and ensure their replacement in case of incompliance.

The following functions are within exclusive authority of the Supervisory Board:

- 1) approval of the bank's strategy according to the key activities defined at the general meeting of bank's shareholders
- 2) approval of bank's budget, including internal audit budget and business plan of bank's development
- 3) definition and approval of the risk management strategy and policy, the procedures of risk management, as well as risk list and its thresholds
- 4) ensuring functioning of the internal control system of the bank and monitoring of its effectiveness
- 5) control of the risk management system efficiency
- 6) approval of the plan for bank operation recovery
- 7) definition of sources of capitalization and other types of financing of the bank
- 8) definition of bank's credit policy
- 9) definition of organizational structure of the bank, including internal audit
- 10) approval of the internal regulations governing the activity of the structural subdivisions of the bank
- 11) appointment and dismissal of the chairperson and members of bank board, chief of internal audit
- 12) control over bank's board activity, offering suggestions on its improvement
- 13) definition of working procedures and plans of internal audit and control over its activity
- 14) designation of audit company to perform external audit, approval of the terms and conditions of the agreement entered into with such audit company, setting the amount of payment for services
- 15) analysis of the bank's external audit report and preparation of recommendations to the General Meeting of Shareholders of the bank to make a decision on it
- 16) 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
- 17) adopting the decisions on establishment of, participation in, reorganization and liquidation of subsidiaries, establishment of standalone units of the bank, approval of their charters and regulations
- 18) approval of terms and conditions of civil and labor agreements entered into with the members of bank's board and employees of internal audit, setting the amount of their compensation, including incentive and compensatory payments

- 19) ensuring timely disclosure (publication) by the bank of the accurate information about its activities in accordance with the law
- 20) the convocation to the general meeting of the bank's shareholders, preparing the agenda of the general meeting of the bank's shareholders, deciding on the date of convocation to the general meeting
- 21) informing about convocation to the general meeting of the bank's shareholders according to the law
- 22) taking the decision on the securities placement by the bank, except shares
- 23) taking the decision on the buying back the securities placed by the bank, except shares
- 24) taking the decision to sale the shares already purchased by the bank
- 25) solving the issues on participation of the bank in groups
- 26) taking decisions on significant agreements in accordance with the law
- 27) taking decision on choosing (replacement) of depository and / or clearing institution, approval of the terms and conditions of the agreement entered into with such institution, setting the amount of payment for services
- 28) in cases provided by law, sending offer to shareholders to purchase their shares
- 28<sup>1</sup>) approving the procedure for operations with the bank's related parties
- 29) exercise of other powers under the charter.

The Supervisory Board shall take steps to prevent and manage conflicts of interest in a bank.

The Supervisory Board shall be obliged to inform the NBU about conflicts of interest arising in the 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 he perform his functions improperly.

The NBU has the right to request the convocation of the extraordinary meeting of Supervisory Board.

Bank shall be obliged to annually, not later than on 30 April, and at the request of the NBU to provide to the NBU, within its authority to perform the banking supervision, the information about the issues discussed at the meeting of the Supervisory Board and decisions made on them and a list of members of the Supervisory Board present at the meeting.

The bank's charter may include other issues within the competence of the Supervisory Board.

The Supervisory Board may decide to present any issue within its exclusive authority in accordance with the law or charter for consideration by the general meeting of the shareholders.

## **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 divisions 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 Shareholders and the Supervisory Board.

## **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 and his/her Deputies.

Bank managers shall comply with the fitness and propriety requirements.

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 shall have experience in banking and/or financial sector.

Chief Accountant of a bank and his/her deputies shall have a higher education degree in accounting and audit and a total of five years of professional experience in banking and/or financial sector for the Chief Accountant and two years for his/her Deputies.

Competence requirements for the bank managers are set by the National Bank of Ukraine.

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 competence requirements, and an independent director for the same reason or if he/she fails to comply with the independence requirement.

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 other 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 competence requirements during their tenure in the respective positions, and the independent directors shall also stay in compliance with the requirement as to their independence. Bank shall be responsible for checking if its managers are in compliance with the competence requirements and in case of independent directors also with the independence requirement. Bank shall also ensure ongoing control of such compliance.

The NBU has the right to replace any bank manager in case of his/her failure to comply with the requirement as to business reputation, it also applies to the independent directors in the breach of the above requirement or requirement as to their independence, and/or bank manager's failure to properly fulfil his/her duties that led to the bank being in a breach of applicable legal requirements uncovered in the process of banking supervision and in accordance with the procedure defined herein. Bank shall take steps to replace such bank manager in according with the procedure defined by the NBU.

The Chairperson, Members of the Board and Chief Accountant of a bank shall be prohibited to hold positions in other legal entities (except for parent companies and subsidiaries, banking unions and associations).

The NBU has the right to receive from public authorities, local government bodies and other legal entities without charge the information necessary to determine the fitness and propriety of bank managers (candidates). During 10 business days from the date of receipt of the NBU request the public authorities and other persons shall furnish NBU with the suitable information.

Bank managers shall be obliged to act in the interests of the bank, to comply with the law, 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 law. If under this Article the responsibility is borne by several persons, their responsibility to the bank is united.

### **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. Risk Management**

A bank shall create a comprehensive and adequate risk management system specific to bank's business and in line with the requirements for risk management set by the NBU. Risk management system shall ensure detection, identification, assessment, monitoring and control over all types of risks at all organizational levels and estimate capital adequacy to cover all types of risks.

A systemic bank taking into account the areas of its activity and pertaining risks shall be obliged to develop the plan of recovery of its activity in line with the NBU requirements.

A bank shall be obliged to establish a permanent risk management unit which is responsible for the development and introduction of internal risk management regulations and processes according to the strategy and policy of the risk management approved by the Supervisory Board.

The risk management unit shall be accountable to the Supervisory Board and separated from the internal audit, units performing operations and units registering operations.

In order to ensure the risk management, a bank shall create permanent committees, in particular:

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

A bank has a right, depending on the difficulty level and transaction volumes, to create other committees.

One person may not combine the post of chairperson of the credit committee and the post of chairperson of the risk management unit.

#### **Article 45. Internal Audit of Bank**

A bank shall establish the internal audit function, which shall be a part of the internal control system.

The NBU shall set the requirements for the professional training of internal audit staff.

The internal audit function shall be accountable to the Supervisory Board and report to it, acting on the basis of the regulation approved by the Supervisory Board.

Organization and working procedures of the internal audit function shall be set centrally by the parent bank for its subsidiaries. The internal audit function of the bank's subsidiaries may be performed by internal audit function of the parent bank.

The internal audit function shall exercise the following functions:

- 1) to review and evaluate the effectiveness of risk management systems, adequacy of these systems to the volumes and types of operations performed by the bank, and the bank's internal controls

- 2) to review the process of capital adequacy assessment considering the bank's risks
- 3) to monitor compliance of the bank managers and employees with the laws and the bank's bylaws approved by the supervisory board
- 4) to assess the IT infrastructure for transaction management and processing
- 5) to review correctness and reliability of the accounting and financial reporting
- 6) to review financial and operating activities of a bank
- 7) to check the compliance of the bank's employees with the qualification and performance requirements
- 8) to reveal and investigate cases of abuse of authority by officials of the bank and conflicts of interest in the bank
- 9) to verify the accuracy and timeliness of information disclosure to the public authorities supervising the bank within their competence
- 10) other functions associated with supervision over activities of the bank.

The internal audit function shall evaluate the types of bank's activities, the implementation of which is ensured through engagement of legal persons and individuals on a contractual basis (outsourcing).

The internal audit function as to the results of inspections shall prepare and submit to the Supervisory Board the reports and proposals of remedial actions.

The bank shall be obliged, according to the procedure determined by the NBU regulations, to submit to the NBU the report on the activity of the internal audit function and other documents related to the internal audit findings.

The candidate for the position of the head of internal audit function shall be agreed upon with the NBU. The fit and proper requirements to the head of internal audit shall be set by the NBU.

The head of internal audit function shall not be allowed to take positions in other banks.

Decision on the discharge of the head of internal audit function shall be taken by the Supervisory Board. Decision on the discharge of the head of internal audit function not on his/her initiative shall be agreed upon with the NBU.

The head of the internal audit function has the right to request the convocation of the extraordinary meeting of the Supervisory Board.

The internal audit unit employees while performing their functions shall have the right to study the documents, information, written explanations on the issues of the bank's activity, including all subdivisions of the bank irrespective of the country of their location, and affiliates of the bank, the right to access to the banking transaction automation system and to require the written explanations from bank managers and employees on matters arising during the audit and related to the audit findings.

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

The Board of a bank shall, within 3 banking days, inform the NBU of the following:

- 1) dismissal of any manager (managers) of the bank and a candidate nominated for this position
- 2) changes in the registered address and location of the bank and its standalone units
- 3) losses in an amount that exceeds 15% of the bank's capital
- 4) capital decreasing to a level lower than that of the regulatory capital
- 5) at least one reason for classifying a bank as problem or insolvent, or for revoking the banking license and liquidating the bank
- 6) termination of banking activities
- 7) a bank manager, an individual owner of qualifying holding, or a representative of a corporate holder of qualifying holding is notified about suspicion of criminal offence.

The NBU shall have the right to define other information which may be important for the banking supervision purposes, with which the NBU shall be furnished by a bank or an owner of qualifying holding.

## **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.

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
- 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. The Central Securities Depository has the right to perform some banking operations on the basis of a limited banking license granted by the NBU in accordance with the established procedure.

A bank is entitled to render the financial services to its customers (other than banks), including 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 inform the NBU of the agent

agreements signed. The NBU shall maintain the register of banks' commercial agents and may establish requirements thereto. Banks may enter into agent agreements with the legal entities meeting the requirements established by the NBU.

The Bank shall render the services of currency assets trading in cash and non-cash 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) lottery tickets issue and distribution, holding lottery draws
- 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) maintenance of registers of registered securities holders (except own shares)
- 7) consulting and information services with regard to the banking and other financial services.

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 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's 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 bank) 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 capital. This restriction does not apply to:

- 1) premises used for technological performance of banking tasks
- 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.

Bank's 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 securities market 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 non-interest bearing credits is prohibited except in the cases specified by the law.

In 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 contract.

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

### **Article 50. Direct Investments by Banks**

Banks shall carry out direct investments and operations with securities in conformity with the laws of Ukraine on securities and investment activity, and in accordance with the NBU regulations.

Banks shall have the right to make investments only on the basis of the written permission from the NBU, which is granted in accordance with the rules set forth by the latter.

Any bank whose regulatory capital completely meets the investment requirements established by NBU regulations shall have the right to make investments without the written permission in the following cases:

- 1) an investment in a financial institution does not exceed in the aggregate 1 percent of the bank's authorized capital
- 2) the investment is made in the authorized capital of the credit bureau that is governed by the Law of Ukraine *On Organization of Formation and Circulation of the Credit Histories*

The notification procedure for the investment, mentioned in part 3 of this Article, shall be established by the NBU.

It is prohibited for banks to invest funds in a legal entity whose charter stipulates the full liability of its owners.

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

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

- 1) shares and other securities acquired by the bank to exercise its right as pledgee and not to be held by the bank for 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 clients.

The requirements set forth in parts 2 and 6 do not apply to activities of the investment banks.

### **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 hryvnias and foreign currency.

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 the settlement operation, the bank shall check the accuracy and verify the document.

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 meeting by such enterprises and business partnerships 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 service, chairmen and committee members of the bank
- 4) bank's congenerous parties and affiliates including banking group participants



- 5) persons having a qualifying holding in the bank's congenerous parties and affiliates
- 6) managers of legal entities and banks' managers who are bank's congenerous parties and affiliates, head of the internal audit service, chairmen and committee members of such persons
- 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 qualifying shareholders
- 9) any person, through which a transaction is performed in the interests of the persons referred to in this part, and which is influenced during such transaction by persons referred to in this part, through labor, civil and other relations.

The bank must submit to the NBU 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 paragraphs 1-9 of part 1 of this Article as the bank's related parties, provided they have characteristics defined by the NBU regulations and taking into account the nature of the relations, transactions and availability of other relations with the bank. The NBU shall notify the relevant bank of such decision no later than the next business day. This being the case, the person shall be considered the bank's related party, unless the bank proves otherwise within 15 business days after the receipt of the notification from the NBU about identifying the person as a related party.

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 case of holding such person liable in accordance with the law – to challenge the grounds for such NBU decision on identifying the person to be the bank's related party.

The agreements entered into with the related parties of the bank may not provide for 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.

It is prohibited for a bank to extend loans to any person with the purpose of repaying obligations of this person to the bank's related party; acquiring assets of the bank's related party with the exception of the products manufactured by the latter; acquiring the securities, placed or underwritten by the bank's related party.

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 set the interest rates and commission fees lower than the cost of services in this bank.

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 bank's activities. The banks shall furnish client with the following information upon request:

- 1) data, which are 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 unit, as well as legal entities and individuals, which hold the 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) data 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 whose provision is obligatory according to law.

Bank 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. Bank shall ensure the accuracy and relevance of the information posted on the website.

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 shall be guaranteed in the order, and to the extent, stipulated by the Ukrainian legislation.

The deposits of individuals in the State Savings Bank shall be guaranteed by the state.

### **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, or seized the bank's own funds.

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

Qualifying shareholders 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 bank's related party 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 and other funds of a bank, placed in its 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 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 its accounts as well as debit operations on accounts of legal entities and individuals may take place only in the case of seizing in accordance with Part 1 of this Article except the other cases envisaged by a contract, 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 account and/or correspondent account. 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 otherwise provided by a contract, law or terms of such encumbrance.

Property or funds of a bank, as well as 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 since 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 correspondent accounts of the bank.

The NBU shall charge the correspondent accounts of a bank at the request of the Household Deposit Guarantee Fund only in 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 has become known to the bank in the course of servicing the client and maintaining relations with the client or to third parties through rendering services to the bank shall be bank secrecy.

Particularly, bank secrecy comprises:

- 1) information of clients' banking accounts, including the correspondent accounts of banks with the NBU
- 2) operations effected in favor or upon instructions of the client, and contracts executed by the client
- 3) financial and economic position of clients
- 4) security systems of the bank and clients
- 5) information on organizational and legal structure of corporate clients (legal entities), their managers and areas of activities
- 6) information on client's commercial activities or commercial secrets, any project, inventions, product samples, and other commercial information
- 7) information on the reporting of a specific bank, with the exception of the publicly disclosed information
- 8) codes used by banks to protect data
- 9) information obtained in the process of creditworthiness assessment of an individual intending to enter into a consumer credit agreement.

The information on banks or clients collected in the process of banking and currency supervision shall be subject to bank secrecy.

The information about banks or clients obtained by the NBU according to an international treaty or under the principle of reciprocity from a banking supervision authority of other country for the purposes of banking supervision and AML or combating the financing of terrorism is bank secrecy.

The provisions of this Article do not cover the general information subject to publication. The list of information subject to the mandatory publication shall be defined by the NBU and additionally by the bank itself upon its discretion.

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.

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

The banks shall ensure the protection of bank secrecy by means of:

- 1) limiting the number of persons who have access to the information that constitutes 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) application of the provisions aimed at maintaining bank secrecy which envisage responsibility for its disclosure in the agreements and contracts concluded between the bank and its client.

When hired, bank employees shall sign a commitment to maintain bank secrecy. Managers and employees of banks shall not disclose confidential information that has become known to them during the exercise of their official duties, or use it for their own benefit or for the benefit of any third parties.

A bank has the right to provide information containing bank secrecy to private individuals and organizations to enable them to perform their duties, or render services to the bank, pursuant to agreements entered into between such individuals (organizations) and the bank, including information about assignment of claim right to a client, provided that the duties, and/or services, specified in the agreements pertain to the activities the bank performs, in accordance with Article 47 hereof.

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

If losses are inflicted on the bank or on its clients due to the leak of information on the bank or its clients from the bodies authorized to exercise the banking supervision functions, the bodies guilty of such disclosure shall reimburse these losses.

## **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 written 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 the Office of Public Prosecutor, the Security Service of Ukraine, the State Bureau of Investigation, the National Police, the National Anti-Corruption Bureau of Ukraine and the Antimonopoly Committee of Ukraine – at their written request concerning transactions with an accounts of a certain legal entity or an sole proprietorship during a specified period of time

- 3<sup>1</sup>) to the Office of Public Prosecutor, the State Bureau of Investigation, and the National Anti-Corruption Bureau of Ukraine on the cases related to detection of unjustified assets and collection of evidence of their groundlessness, within the limits of their competence, upon their written request as regards transactions of a specific legal entity, sole proprietor or individual, for a specific period of time, indicating counterparties

3<sup>2</sup>) to the National Anti-Corruption Bureau of Ukraine within the limits of its competence, including the cases related to detection of unjustified assets and collection of evidence of their groundlessness, upon its written request as regards accounts, deposits, transactions, transactions on accounts or those without opening accounts of a specific legal entity, sole proprietor or individual, for a specific period of time, indication counterparties

4) to the central government agency implementing state tax policy:

a) at its written request on existence of bank accounts

b) Article 62, parts one, paragraph 4, subparagraph b) was excluded.

c) Article 62, part one, paragraph 4, subparagraph c) was excluded.

d) 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 the tax rules and application of the provisions of the U.S. Foreign Account Tax Compliance Act (FATCA), and in other international agreements containing provisions on data exchange for tax purposes, for obligation of which the Verkhovna Rada of Ukraine gave its consent, or in interagency agreements concluded based on them. The procedure for disclosure of such information is established by the NBU.

5) to the central government agency implementing a state policy in the area of prevention and counteraction to legalization (laundering) of proceeds from crime or terrorism financing at this agency request regarding financial operations (transactions) connected with the financial operations (transactions) that have become an object of financial monitoring (analysis) in accordance with the laws related to prevention and counteraction to legalization (laundering) of proceeds from crime or terrorism financing as well as with participants in stated operations (transactions)

6) to state enforcement agencies and private enforcement agents at their written request concerning enforcement of court judgments and decisions subject to enforcement in accordance with the Law of Ukraine *On Enforcement Proceeding* with regard to the existence and/or state of a debtor's accounts; flow of funds and transactions with a debtor's account 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) by court order to the National Anti-corruption Agency concerning accounts, account balances and transactions of certain legal entity, individual or sole proprietor in accordance with the Law of Ukraine *On Prevention of Corruption*

9) to other banks 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*

10) to the National Agency of Ukraine for identifying, tracing and management of assets derived from corruption and other crimes, upon its written request in connection with identifying and tracing assets which may be seized in criminal proceedings, – on the availability and state of accounts, transactions on the accounts of a particular legal entity, individual or sole proprietor

11) to the central executive body formulating and implementing the state financial and fiscal policy in order to verify and monitor government payments, on its request as regards bank accounts of the

individuals who are assigned, accrued and/or made government payments, and of the individuals who have applied for assignment of government payments, and operations on debiting/crediting accounts and balances in such accounts on a specific day or for a specific period of time.

The request of the respective state agency for obtaining the information that contains bank secrets shall:

- 1) be presented on a letterhead of the established form of the public authority or sent in the electronic form
- 2) be signed by the manager (or deputy manager) of the public authority and bear an official seal or authenticated by the electronic signature of the manager (or deputy manager)
- 3) contain the reasons stipulated by this Law to obtain such information
- 4) carry references to the provisions of the Law, in accordance with which the public authority has the right to obtain such information.

The bank shall issue statements on accounts (deposits) in the event of the death of their owners to persons specified by the owner of the account (deposit) in his/her bequest for the bank, to state notary offices or private notaries, officials of local authorities who have notarial powers, and 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. The bank shall issue statements on the movable property of deceased customers, which is in safe custody and/or pledged as collateral, existence of an individual lockbox and/or agreements on leasing of an individual lockbox to state notary offices or private notaries, officials of local authorities who have notarial powers, and 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.

The bank is prohibited from providing information about clients of another bank, even if their names are mentioned in documents, agreements and operations of the client, unless such information is provided pursuant to the requirements set forth in part one, paragraphs 3, 3<sup>1</sup>, and 3<sup>2</sup> of this Article.

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 of safeguard measures under the [Law of Ukraine On Currency and Currency Operations](#).

The bank is entitled to disclose the information containing a banking secret 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 the actions envisaged by the program of financial rehabilitation of the bank or during the liquidation procedure. The NBU is entitled to furnish the central government agency responsible for development of the state financial policy with the information containing the banking secrets about the banks in whose capitalization the state is to participate.

Restrictions with regard to obtaining the information containing banking secrets, which are stipulated by this article, shall not apply to employees of the NBU or persons authorized by them, who, within the powers provided by the law, exercise functions of banking supervision or currency supervision.



The restrictions on obtaining banking secrets specified in this article shall not apply to the staff of the Deposit Guarantee Fund when they exercise their normal duties and powers set forth in the Law of Ukraine *On Households Deposit Guarantee System*.

The NBU shall have the right to provide the Deposit Guarantee Fund with information about banks, or their customers, which is obtained in the course of banking supervision and is considered bank secrecy, in instances stipulated by the Law of Ukraine *On Households Deposit Guarantee System*.

The NBU shall be obliged to provide the banks with access to information from the Credit Register, which constitutes bank secrecy and contains data specified in part eleven of Article 67<sup>1</sup> hereof.

The NBU shall disclose information on a bank or a bank's related party, which is obtained in the course of banking supervision and is considered bank secrecy, upon a written request of public authorities authorized to carry out pre-trial investigation in case of violation of the legislation with signs of a criminal offense and in the cases related to detection of unjustified assets and collection of evidence of their groundlessness.

For the enforcement purposes, the NBU shall have the right to provide the state enforcement agency with its decisions on applying to the bank or a foreign bank branch of the corrective measures in a form of a fine, which are considered as 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 containing 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 about banks, that is obtained in the course of banking supervision and is considered bank secrecy, in instances stipulated by the [Law of Ukraine](#) *On the Regime of Joint Transit and Introduction of the National Electronic Transit System*.

The Deposit Guarantee Fund shall have the right to disclose bank secrets pertaining to an insolvent bank, which it has placed under a provisional administration, or liquidation, to a successor bank, a bridge bank, an investor purchasing the insolvent or bridge bank, or to other parties involved in the provisional administration, or liquidation, and upon a written request of public authorities authorized to carry out pre-trial investigation in case of violation of the legislation with signs of criminal offense and in the cases related to detection of unjustified assets and collection of evidence of their groundlessness. These entities shall be obliged not to disclose the obtained information to other parties.

In accordance with an international treaty of Ukraine or under the principle of reciprocity, the NBU has the right to provide information received from supervision activity to the banking supervision authority of another country and to receive such information from the banking supervision body of another country. The information provided (received) may be used exclusively for the purposes of banking supervision or prevention of legalization (laundering) of proceeds from crime or terrorism financing.

Provisions of the second and fourth parts of this Article shall not apply to the cases of providing the information to the central executive authority implementing the state policy in the area of prevention and counteraction to legalization (laundering) of the proceeds from crime, terrorism financing and financing proliferation of weapons of mass destruction (hereinafter – AML/CTF area) in cases envisaged by the law, as well as information on opening (closing) of tax payers' accounts to the tax authorities in accordance with Article 69 of the Tax Code of Ukraine.

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

The persons found guilty of violating the procedure for disclosing and using bank secrets, shall bear responsibility in accordance with the laws of Ukraine.

#### **Article 62<sup>1</sup>. Provision of Information about Borrowers' Accounts**

In the event of opening/closing an individual's account the bank shall be obliged to check the availability of information about inclusion of such a person in the Single Register of Debtors.

In the event of opening an account in the name of the individual included in the Single Register of Debtors, including via the bank's standalone units, or closing an account by such individual, the bank shall be obliged to inform the State Enforcement Service or a private bailiff about this on the day of opening/closing the account.

The procedure for providing such information and the form of notification shall be established by the NBU on approval of the Ministry of Justice of Ukraine.

### **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 perform inspection of banks' compliance with the laws governing relations in the AML/CTF area as well as of sufficiency of the measures aimed at the prevention and counteraction of 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 requirements to and limits on the banks' 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) defining deductions to the provisions against risks from banking operations with assets
- 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 activity of the NBU shall cover all banks, their separate subdivisions, affiliates and congenerous parties of the banks, 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 as to performing banking activity.

When exercising banking supervision or supervision in the AML/CTF 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 includes the bank; financial standing of the bank and of its owners of qualifying holdings

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 risks to which the bank is exposed or may to be exposed, quality of the bank's corporate governance, efficiency of the risk management and internal control systems, including in the AML/CTF area, the impact of risks and stress factors on the efficient, reliable, and reasonable bank's management, 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. An entity shall have the right to request a revision of a relevant document within 15 business days from the date of its receipt.

For the purpose of banking supervision the NBU is entitled to receive from public authorities and other persons the information, including confidential, regarding the financial/property standing of the bank founders and persons 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.

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, 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 safety of the funds committed to the trust of such banks or harm due performance of banking. If the NBU, when exercising banking supervision, has determined that a bank has no efficient, and/or adequate, risk management processes, the bank shall be obliged, at the request of the NBU, and without delay, to develop a set of corrective measures and submit it to the NBU for approval.

The NBU is entitled to introduce a special mode of control over activities of a bank and to appoint the bank's curator. The special control mode is an additional instrument of banking supervision. During the provisional administration of a bank or the special mode of control over a bank the NBU is entitled to forbid the bank to make use of the direct correspondent accounts for settlements and/or demand the bank to settle only through a consolidated correspondent account.

The bank's curator shall have the right to require from the bank management to eliminate banking law breaches, meet the requirements of the NBU regulatory documents, provide clarifications on issues regarding observance of banking laws and regulatory documents of the NBU in writing, fulfill

the requirements and restrictions on the banks' activities imposed by the NBU as well as to eliminate breaches while carrying out any bank's transactions. The requirements to the bank management shall be in the written form only.

According to the requirements set out in regulatory documents of the NBU, the bank's curator shall have the right to obtain from depositors and other bank's creditors the information necessary for the control over the status of liabilities fulfilment by the bank.

In the course of banking supervision, the NBU may use services of other institutions under separate agreements.

In case the banking license is revoked, the NBU informs thereof the relevant bodies 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 on-site inspections and off-site supervision.

In the course of off-site supervision the NBU is entitled to demand in writing copies of documents of any bank as well as written explanations regarding its activities.

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

In the course of supervision over the institutions, which carry out banking activity in other countries, the NBU shall co-operate with the relevant bodies of those countries. Notifications sent by the relevant bodies of other countries, may only be used for the following purposes:

- to check a license of an institution for carrying out activity
- to check the right for carrying out the banking activity.

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 banks' credit risk 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 about lending transactions of the banks, in relation to which the NBU took a decision to refer them to the category of insolvent banks or a decision on revoking of banking license and liquidation, shall be provided to the Credit Register by the Deposit Guarantee Fund directly or by a Fund's authorized person in the event of delegating Fund's powers to the said person.

The bank shall submit to the Credit register the following information:

- 1) data 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 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, private entrepreneurs and non-governmental organizations

2) information about 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 transaction

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 about 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 about the corporate borrower including

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, private entrepreneurs and non-governmental 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, private entrepreneurs, and non-governmental 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, private entrepreneurs, and non-governmental 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 list of information to be provided to the Credit Register by the Deposit Guarantee Fund directly or by a DGF's authorized person in the event of delegating Fund's powers to the 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 National Bank of Ukraine.

Banks and the DGF directly or by a DGF's authorized person in the event of delegating DGF's powers to the 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 Deposit Guarantee Fund or a Fund's authorized person in the event of delegating Fund's powers to the 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 banks' depositors and other creditors 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 inform 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 the 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 – the applicant) have the right to access to the data on them and to the data on requests for obtaining such data on them pursuant to the procedure prescribed by the data protection laws and 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 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 case 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 Deposit Guarantee Fund or to a Fund's authorized person in the event of delegating Fund's powers to the 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 of banking license and liquidation.

The bank or the DGF or a DGF's authorized person in the event of delegating Fund's powers to the said person shall be obliged, within 15 business days of the day of 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 remain the information unchanged and lift the mark in case the bank,

the Deposit Guarantee Fund, or a Fund's authorized person in the event of delegating Fund's powers to the 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 21st 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 case the applicant's request foresees no other form of notification.

In case the bank or the DGF or a DGF's authorized person in the event of delegating DGF's powers to the 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. In case the bank, the DGF, or a DGF's authorized person in the event of delegating DGF's powers to the 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 act or omission of the bank, the DGF, or a DGF's authorized person in the event of delegating DGF's powers to the 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 Credit Register data, is not less than 100 minimum monthly wages (or the equivalent in the 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 in case they are the borrowers (and/or related parties) of this bank, or there are documents that prove entity's application concerning the intention to perform an asset-side operation with the bank, and include the following:

1) data 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, private entrepreneurs, and non-governmental organizations

2) information about conditions of the lending operation and fulfilment of the obligations under the lending operation viz.

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 transaction

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 disagree (is available)

3) whether a borrower belongs to the bank's related parties

4) information about 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 about 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, private entrepreneurs and non-governmental 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, private entrepreneurs, and non-governmental 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 believes 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, private entrepreneurs, and non-governmental 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 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 from the Credit Register information 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 about loan repayment or termination of its liabilities.

The NBU shall provide the banks with access to real-time data in the Credit Register on a free-of-charge basis.

## **Chapter 13. ACCOUNTING, REPORTING, AND AUDITING**

### **Article 68. General Principles of Accounting and Reporting in the Banks**

The banks shall organize accounting in accordance with the internal accounting policy, developed on the basis of the rules and regulations established by the NBU in accordance with the International Accounting 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.

The financial statements of every bank shall show the results of its activity for the reporting period.

### **Article 69. Reporting of Banks**

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.

The NBU has the right to request a bank/banking group to submit the consolidated and sub-consolidated reporting.

The NBU shall prescribe the following for the banks/banking groups:

- 1) reporting forms and methodology for their compilation
- 2) frequency and time frame for submission of the reports
- 3) structure of explanatory notes
- 4) minimum disclosure requirements and terms
- 5) methods of compilation of the consolidated and sub-consolidated reporting.

In certain cases the NBU is entitled to require the banks and banking groups to submit ad hoc and preliminary reporting.

Each owner of the 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 or information from the bank's qualifying holding owner in order to supervise the security and stability of the bank's financial position and to ensure adherence to the provisions of this Law.

The fiscal year of any bank is a calendar year beginning on January 1st.

Any bank shall, during a month following the reporting period, publish on the bank's web site as well as distribute at the bank's premises accessible for customers, including the depositors, the quarterly balance sheet and financial performance report together with the explanatory notes thereto, the list whereof is determined by the NBU.

The bank shall publish the auditor's report and audited thereby annual financial reports and annual consolidated financial reports containing:

- 1) balance sheet
- 2) profit and loss statement
- 3) statement of cash flows
- 4) statement of changes in equity
- 5) notes to the reports, the list whereof is determined by the NBU.

Any bank shall, before 30 April of the year following the reporting one, publish the annual financial reporting and annual consolidated financial reporting together with the auditor's report as well as other information, in the scale defined by the NBU, about the bank's qualifying holding owners in periodicals and/or as separate prints or else in the Internet.

The bank shall, on its own initiative or under the requisition of the NBU, during one month after the publication, negate the unreliable financial reporting (annual financial reports and/or annual consolidated financial reports) published, in the same way as it has been 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 shall disclose the auditor's conclusion and the annual consolidated reporting of the banking group audited by an audit firm no later than on 1 June of the year following the reporting one. The composition of the reporting and disclosure procedure according to the procedure shall be determined by the NBU based on the requirements of the part nine of this Article.

## **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.

Audit of banks may be effected by an audit firm entered in the section of the Register of Auditors and Audit Companies maintained pursuant to the law, in the part related to audit companies entitled to carry out financial audit of public interest entities.

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 NBU regulations.

Any bank is entitled to conclude agreements on audit of the annual financial reporting and consolidated financial reporting with the same auditor, but 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.

The auditor (audit firm) shall notify the NBU of material distortions in financial statements indicators, violations and operational deficiencies detected during the audit and provision of audit services, which could result in the bank insolvency, including of material losses of the bank regulatory capital.

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 regulations.

Any inspection shall be performed in accordance with the schedule, approved by the NBU. The scheduled inspection shall be conducted not more than once a year. The NBU shall inform the bank of conducting the scheduled inspection not later than in 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 working hours to the persons authorized by the NBU to inspect the bank.

The bank managers and employees shall free of charge open access to the automated system of bank transactions to the authorized NBU personnel, as well as provide them with information, documents and written explanations on bank's activities and, should any violation of the legislation of Ukraine on banks and banking, including the NBU regulations, have been detected, also with copies of the documents according to the procedure established by the NBU.

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 the person, authorized by the Governor.

The authorized by the NBU persons are entitled to receive from the bank information, documents and copies thereof, written explanations on bank activity issues as well as to withdraw copies of the documents testifying to violations of the laws of Ukraine, including the NBU 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 a qualifying holding in a bank and banking group participants shall belong to the persons subject to inspections of the NBU.

A person (entity) in respect of which there is information that he/she/it has conducted or conducts banking activity without a license may also be subject to the NBU inspection.

### **Article 73. Corrective Measures**

In case 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, under NBU's regulations or its requirements set forth under Article 66 of the Law, or perform activities that pose threats to the interests of depositors or other creditors, or if a bank or its qualifying shareholders are subjected by 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, the NBU shall have the right to apply the following corrective measures, which are commensurate with the extent of the violation 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 assumes an obligation to pay a defined monetary liability and 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 fulfillment by the bank of the terms of the written agreement, the National Bank of Ukraine 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) impose increased individual economic ratios for the bank in question
- 6) increase the loan loss provisions and allowances for other assets
- 7) limitation, termination or suspension of some transactions performed by the bank, including transactions with the bank's related parties
- 8) impose a ban on granting unsecured loans
- 9) impose 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/CTF. The maximum fine for violation of the laws related to AML/CTF shall not exceed 7,950 thousand nontaxable minimum household incomes.

bank that failed to fulfil the requirement of the bank curator in the amount from two to three thousand of non-taxable minimum household incomes

qualifying holding owners of the bank for non-fulfilment of the obligations on provision of the required financial support to the bank under measures taken to bring a problem bank in compliance with the law in a amount from five to ten thousand of non-taxable minimum household incomes

a person that acquired or increased the qualifying holding in a bank, should they have violated the requirements of Article 34 hereof regarding purchase or increase of the qualifying holding in the bank, in an amount of up to 10 percent of:

the nominal value of the purchased shares (stakes) of the bank, if the person acquired or increased direct qualifying holding in a bank

nominal value of shares (stakes) owned by shareholder (participant) of the bank through which the person acquired or increased the qualifying holding in the bank, if the person acquired or increased the indirect qualifying holding in the bank.

The fine for violation of the procedure for acquisition or increase of the qualifying holding in the bank shall be imposed on the person, which acquired or increased the qualifying holding in the bank or to any person in the bank ownership structure through which such person acquired or increased the qualifying holding in the bank.

- 10) temporary prohibition for the qualifying holding owner to use of his/her/its voting rights until elimination of the violation (provisional prohibition of the use of voting rights)
- 11) suspend temporarily a bank's official from his/her office until they take corrective measures
- 12) declare the bank problem or insolvent
- 13) revoke the banking license and liquidate 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.

An NBU decision to apply a corrective measure must contain the following:

data 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)

data 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 (persons) 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/objectives.

Provisional prohibition of the use of voting rights shall be applied through banning the use of the voting rights by:

direct qualifying holding owner – corresponding to the bank's shares (stakes) belonging to the qualifying holder or, provided the procedure for acquiring or increasing the qualifying holding in the bank was violated, to the bank's shares (stakes) purchased by the qualifying shareholder

indirect qualifying holding owner – corresponding to the shares (stakes) belonging to the bank's shareholder (participant) through whom the person acquired or increased the qualifying holding in the bank.

The provisional prohibition of the use of voting rights may be applied in addition to other measures provided for by part one hereof.

If the provisional prohibition of the use of voting rights is applied, the NBU shall appoint an authorized representative to whom voting rights of relative shares (stakes) and the right to engage in any way in bank management shall be transferred.

The NBU is not entitled to appoint as such an authorized person any owner of a qualifying holding in the bank.

The authorized person shall, in the process of the voting, act in the interests of the competent and prudential management of the bank. The authorized person shall, during the whole period of his/her status validity, meet the requirements set by this Law and NBU regulations regarding the irreproachable business reputation.

The person suspended from office or temporarily prohibited to use the voting rights of the purchased shares (stakes) on the basis of the NBU order, may be reinstated in office or in the voting rights under purchased shares (stakes) only on the basis of the NBU decision.

In case of violation of the requirements of this Law, NBU regulations, by the banking group, its responsible person or other banking group participants, their engagement in risky activities menacing bank depositors' interests, existence of the banking group structure that renders the consolidated supervision impossible, the NBU is entitled to apply the corrective measures, adequate for the violation, prescribed by the first part of this Article or any of the listed below:

- 1) prescription of higher economic ratios, limits and restrictions with regard to some types of operations for the banking group
- 2) prohibition to conduct transactions the parties whereof are the bank and other banking group participants
- 3) request to the bank to alienate the shares of participation 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 case of violation of the requirements of this Law, NBU regulations by the nonbank financial institutions being the banking group members, the NBU is entitled to address the authorities overseeing such persons' activities with the request on application of adequate corrective measures to these persons.

#### **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.

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 NBU regulations.

Corrective measures under Article 73 hereof may be applied by the NBU to banks, foreign bank branches or individuals within six months from the date of detection of the violation, but no later than three years from the date of its commitment.

Corrective measures for violation of the legislation on prevention and counteraction to legalization (laundering) of the proceeds from crime, terrorism financing and financing of weapons of mass destruction may be applied by the NBU to banks and foreign banks' branches 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 an enforcement measure in a form of a fine is an enforcement document and shall enter into force from the date of its approval. In the event of any failure to carry out such decision, the NBU shall register it with the Single Public Register of Enforcement Documents and submit to the enforcement authorities for enforcement in accordance with the law.

Information about corrective measures applied to banks and foreign banks' branches for violation of the AML/CTF legislation shall be published on the official NBU website according to the procedures established by 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) The bank, within 30 calendar days in a row, 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) the bank, within 30 calendar days in a row, 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 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 domestic and foreign currencies for payments. Payments shall be done solely through consolidated correspondent account at 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 obligated, 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 obligated 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) 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 NBU regulations within the term specified by the NBU.

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, 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 Deposit Guarantee Fund of this decision to take actions stipulated in the Law of Ukraine On Households Deposit Guarantee System
- 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 Ukrayiny* or *Uriadovyi Kuryer*. From the date of publication of the full text of the decision on the official NBU website, the bank, its shareholders, depositors, other creditors, and counteragents shall be deemed informed about the NBU 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 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 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 a notification from the Deposit Guarantee Fund on the termination of powers of the supervisor of the Deposit Guarantee Fund due to bringing the bank's activities in compliance with banking laws of Ukraine concerning compliance with capital and liquidity ratios.

## **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 Deposit Guarantee Fund.

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 Deposit Guarantee Fund, 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 National Bank of Ukraine, no later than the next day following adoption of the decision on revocation of the banking license and bank liquidation, shall do the following:

- 1) shall inform the bank and its shareholders about the above decision and send the decision to the Deposit Guarantee Fund
- 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 official NBU 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 Deposit Guarantee Fund, on the day it received the NBU 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 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. Shareholders Voluntary Bank Liquidation**

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 banks.

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 Deposit Guarantee Fund shall apply to the bank measures stipulated by this Law and the Law of Ukraine *On Household Deposit Guarantee System*.

## **Section VI. CHALLENGING THE NATIONAL BANK OF UKRAINE DECISIONS**

### **Article 79. Challenging the NBU Decisions**

A bank or other persons under the National Bank of Ukraine supervision shall have the right, according to the procedure specified by the law, to challenge in a court the decisions, actions or omissions (inactivity) of the National Bank of Ukraine, its employees and officials.

*(a certain provision of Article 79 part one, namely, "under the National Bank of Ukraine supervision" 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)*

Specifics of appealing against NBU decisions (individual acts) on declaring the bank insolvent, revocation of the bank's banking license, and the bank's liquidation are specifies 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 (shareholders) 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 (shareholders) 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 case of recognition of the NBU 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 decision on declaring the bank insolvent/revocation of the bank's banking license and the bank's liquidation (hereinafter – 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, real bank's 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 official NBU 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 (shareholders) 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.

**President of Ukraine**

**Kyiv**

**7 December 2000**

**No. 2121-III**

**Leonid Kuchma**