



A NEW APPROACH TO BANKING LEGISLATION

On the background of a continuous crisis of the banking system, the fall of 2016 brings a series of improvements to the banking law. They are focused primarily on compliance of the national legal framework with the EU acquis and recommendations of the International Monetary Fund. However, they reflect recent transformation of the banking system and impede certain activities, incompatible with a prudent banking activity. Though the manner of adoption of the new legal framework seems controversial, it cannot be contested that all these improvements are aimed at strengthening the national legal framework, the transparency and quality of banks' shareholders, and the prudent management of bank risks.

We will reflect below some of the latest amendments to the Law on Financial Institutions No. 550 dated 21.07.1995 (the „Law on Financial Institutions“), operated by the Law No. 233 dated 03.10.2016, in effect since 04.10.2016. As banking practitioners, we firmly believe that reiterating these on paper shall not be redundant.

Bank-related parties

The concept of related parties is being revised. Thus, the list of related parties shall be either complemented, or amended with the following:

- legal entities and/or individuals which, directly or indirectly hold or control 1% and more from the bank's capital (compared to 5% and more

- prior to the amendments), including their beneficial owners and the chain of interposed parties, through which the beneficial owner holds or controls the legal entity or the individual mentioned;
- any entity related to the bank or any entity that is a party in joint ventures; or any entity related to or party in joint ventures of a member of a group of bank-related parties; or entities and bank that are parties in a third party joint venture. The amendments define the notions of related entity and joint venture;
 - close family members of any related individuals, including spouses, and their relatives up to the third degree of kinship;
 - any party, through which a transaction is carried out in the interest of a related party, and which is considered to be influenced by the related party in the transaction, due to the existence of any labour, civil or any other relations between these parties, determined according to the regulations of the National Bank of Moldova (the "National Bank").

These amendments conceptually enlarge the list of bank-related parties. It is certain that the amendments to the concept of related parties are intended to ensure the diligence of certain banking transactions, as well as bring essential knowledge on bank shareholders and risks related to transactions with bank shareholders and their related parties.

According to the last amendments, the terms, limits and restrictions applied to transactions with related parties may include requirements on formation of additional reserves to cover possible losses on loans and other assets pertaining to transactions with related persons. This will be an additional incentive for banks to ensure a more diligent monitoring of transactions with related parties.

Presumptive nature

The "presumption of affiliation" is an innovation. Thus, if related parties meet one or more criteria stipulated in the regulations of the National Bank, or the nature of relationships and transactions between the party and the bank justifies such an assumption, the National Bank may presume that certain parties, which became known in the bank supervision process, are related to such bank. The National Bank shall notify the bank of such decision not later than the following working day. Until proven otherwise (evidence shall be submitted to the National Bank within 15 working days after the receipt of notification), parties identified by the National Bank are presumed to be bank-related parties as of the date of the transaction.

Share capital

The imperative requirement on payment for bank shares with cash only was also subject to amendments. However, the possibility of paying shares with state securities applies only to the bridge bank and only for initial capital forma-

tion. The concept of the bridge bank and its legal status can be found in the Law on Bank Recovery and Resolution No. 232, adopted within the same package of laws.

Bank Charter

The Law on Financial Institutions was amended with provisions to be included in bank charters.

According to the amendments, the bank charter shall specify the liability of direct and indirect holders, as well as of beneficial owners, to submit to the bank the requested information in order to ensure the bank's compliance with legal provisions. Thus, banks need to introduce provisions concerning the manner and terms of providing information required from the direct, indirect holders and beneficial owners.

Foreign banks' subsidiaries

Recent amendments contain a separate chapter on the legal regime of operation of foreign banks' subsidiaries on the Moldovan banking market. Basic rules of activity of such entities were presented in a more comprehensive and consolidated manner, starting with the legal status of subsidiaries, licensing and supervisory requirements, and inspections carried out by competent authorities from the country of origin of a foreign bank, and ending with the requirements for information disclosure by foreign banks' subsidiaries.

Prudential measures

Rules defining prudential measures, which are mandatory for commercial banks, have also been modified.

Thus, if the National Bank reveals that a bank is exposed to any risks, as well if the bank is of systemic importance, the National Bank may impose increased prudential requirements comparing to the requirements set out of Art. 28 para. (1) and (2) of the Law on Financial Institutions. Moreover, under these circumstances, the National Bank will be justified to skip the formal prior notification procedure and to order immediate enforcement of enhanced prudential requirements.

It must be noted that the special supervision and administration regime was excluded from the Law on Financial Institutions. On the other hand, early intervention measures, enforcement of resolution tools are reflected in the Law on Bank Recovery and Resolution, to which we will refer in one of our next publications.

While drafting this information, the National Bank has applied the early measures regime to one of the commercial banks on the Moldovan market. In this particular case the regime is established in order to ensure a prudent and healthy management of the bank's activity. It is accompanied by the suspension

of rights of some shareholders, cancellation of powers and duties of some executive members, and appointment of a temporary administrator. It must be noted that the legal framework prior to the amendments to the Law on Financial Institutions and adoption of the new Law on Bank Recovery and Resolution contained sufficient leverage and intervention mechanisms. Still, for some reason, those have not been used. Hopefully, the fate of recent amendments will be different, and early enforcement thereof comes as a sufficient proof.



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