

# LAW OF MONGOLIA

28 January, 2010

Government Palace, Ulaanbaatar

## **BANKING LAW (Revised version)**

### **CHAPTER I. GENERAL PROVISIONS**

#### **Article 1. Purpose of the law**

1.1. The purpose of this law shall be the regulation of relations concerning licensing of banks, the revocation of licenses, the establishment of general principles of a bank's management, organization and activities, supervision of banks and banking conglomerates and taking enforcement measures against them.

#### **Article 2. Legislation on banking activities**

2.1. The legislation on banking activities is comprised of the Constitution of Mongolia, the Law on Central Bank (Bank of Mongolia), this law and other relevant legislation, which is consistent with them.

2.2. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provisions of the international treaty shall prevail.

#### **Article 2<sup>1</sup>. Scope of the Law**

2<sup>1</sup>.1. Other relations except specified in the Law on Development Bank of Mongolia shall be governed by this Law.

#### **Article 3. Definitions**

3.1. The terms used in this law shall have the following definitions:

3.1.1. "Bank" is a profit seeking legal entity which has paid in capital consisting of cash funds invested by shareholders, and the shareholders of which bear financial liability to the extent of their invested capital, and is engaged in financial intermediary services such as taking deposits, extending loans on its own behalf and executing payments and settlements under a license from the Bank of Mongolia.

3.1.2. "Related person" means the following person:

3.1.2.a. a member of a the banking conglomerate;

3.1.2.b. a natural or legal person which holds 5 percent or more of shares of the bank or member of banking conglomerate, their managerial official, and the spouse, parent, sibling or child of those persons;

3.1.2.c. a legal person in whom a bank holds 5 percent or more of shares;

3.1.2.d. legal person in which a managerial official of the bank, and the spouse, parent, sibling or child of those persons, hold 5 percent or more of the bank shares;

3.1.2.e. a managerial official of the bank, a member of the banking group and the spouse, parent, sibling or child of those persons;

3.1.2.f. person who has common interests with the bank which enables such persons to exert significant influence on the operations of the bank;

3.1.2.g. legal person whose managerial official is at the same time is an managerial official of the bank;

3.1.2.h. legal person whose managerial official holds 10 percent or ore of the bank's voting shares;

3.1.2.i. other natural and legal persons with common interests with persons specified in this provision;

3.1.2.j. other persons considered by the Bank of Mongolia as related persons.

3.1.3. "Bank resolution" means the comprehensive management, organizational, financial and other relevant measures taken to improve the financial position and reduce the bank's loss by making changes in the composition of paid-in capital and organizational structure of a bank, or by increasing or decreasing the paid-in capital.

3.1.4. "Bank reorganization" means the merger, acquisition, division, separation, and transformation in accordance with procedures set forth in the legislation.

3.1.5. "Assets, liabilities and equity of a bank" are terms defined in the accounting regulation adopted by the Bank of Mongolia in accordance with international standards.

3.1.6. "Banking conglomerate" means separate entities which are related parties to each other and one of which is a bank.

3.1.7. "Member of a banking conglomerate" means a legal entity which fulfills the requirements stated in provision 3.1.6 of this Law.

3.1.8. "Consolidated supervision" means the assessment of a financial position of members a banking conglomerate on a stand-alone and consolidated basis.

3.1.9. "Capital adequacy" means the assessment of adequacy of the bank's capital base to cover losses caused by financial and operational risks.

3.1.10. "Regulatory capital" means the minimum level of capital adequacy set by the Bank of Mongolia and specified in 3.1.9 of this Law.

3.1.11. "Financial regulatory authority" means the Bank of Mongolia, Financial Regulatory Commission and foreign organizations that have similar functions.

3.1.12. "Controlling shareholder of the bank" means a person holding 5 or more percent of the bank shares solely or together with a related person, their beneficial owner or a shareholder and its beneficial owner that can influence the policy, decision and management of the bank;

3.1.13. "Bank unit" means the bank branch, representative office, settlement center, and settlement cash counter that do not have a legal entity mandate.

3.1.14. "A parent company in a banking conglomerate" means a company which controls the banking conglomerate and its members;

3.1.15. "Unsound operations" means operations that may expose the bank to excessive risks as defined in a regulation adopted by the Bank of Mongolia;

3.1.16. "Provisional administration of the bank" refers to comprehensive management, organizational, financial, and operational measures taken by the Bank of Mongolia according to the law with the objective to ensure normal functioning and to improve the financial position of the bank that was identified as solvency position is worsening or bank is unable to function in a short term or bank management made serious legal violations that could deteriorate bank functioning, lead significant losses and asset risk during a supervision carried out by the Bank of Mongolia;

3.1.17. "Beneficial owner" refers to a person with ownership right who directs the bank operations, or exercises that right by delegating to others, or owns the bank shares through a chain of one or more legal persons, established the legal person and who has the right to make earning from the bank shares and operations;

3.1.18. "Key function of a Bank" shall be understood to mean the bank operations whose interruption would probably lead to the threat to banking system stability or pose real adverse impact to the country's economy, due to the market share and the linkages of the operation.

3.1.19 "Connected person" means a natural or legal person which Bank of Mongolia determines so in accordance with such attributes of direct or indirect participation in the equity ownership, management, control and operations of a legal entity, and with common business interest.

3.1.20. "A systemically important bank" means the bank that is defined by the Bank of Mongolia as systemically important based on criteria such as the size of bank assets and liabilities, share of transactions in the payment system, core bank operation, and interconnectedness in the financial sector.

#### **Article 4. Types and forms of bank**

4.1. A bank can be state, privately or jointly owned, depending on ownership of its paid in capital; and a general or specialized bank, depending on the type of banking activities it performs.

4.2. The systemically important bank shall be incorporated as a joint stock company and other banks as a limited liability company.

## **Article 5. Non-interference with bank activities**

5.1. Unless otherwise provided by law, the Bank of Mongolia and/or public administrative body shall not interfere with activities of a bank and illegitimately influence the bank's management and/or decisions.

5.2. A bank shall not bear responsibility for obligations undertaken by the State, and the State shall not bear responsibility for obligations undertaken by a bank unless the State specifically assumes that responsibility.

## **CHAPTER II. BANKING ACTIVITIES**

### **Article 6. Banking activities**

6.1. Banks shall carry out the following activities under a license from the Bank of Mongolia:

6.1.1. Accepting deposits;

6.1.2. Disbursing loans;

6.1.3. Payments and settlements services;

6.1.4. Providing payment guarantees and warranties to third parties on its own behalf;

6.1.5. Purchasing, selling, and accepting and placing deposits in foreign currency;

6.1.6. Purchasing, selling, and accepting and placing safety deposits of precious metals and stones;

6.1.7. Receiving valuables into custody;

6.1.8. Conducting foreign remittance services;

6.1.9. Issuing, buying and selling securities;

6.1.10. Dealing in financial leasing transactions;

6.1.11. Selling and buying loan portfolios and other financial instruments;

6.1.12. Other financial transactions and services permitted by the laws and regulations and authorized by the Bank of Mongolia that are essential to carrying out the operations set forth in this law.

6.2. Banks shall carry out the following activities under a license from the Financial Regulatory Commission:

6.2.1. Providing consultancy services and information regarding investment and finance;

6.2.2. Conducting trust operations;

6.2.3. Insurance intermediation;

6.2.4. Underwriting;

6.2.5. Custodian;

6.2.6. Factoring;

6.3. The bank shall furnish the following documents to the Bank of Mongolia while applying for a license to engage in activities specified in clauses 6.1 and 6.2 of this Law:

6.3.1. which type of the activities specified in provisions 6.1 and 6.2 of this Law it intends to engage in;

6.3.2. funding sources required for the selected type of activities and proof of origin;

6.3.3. availability of an office space and technical equipment;

6.3.4. software to be used in the activities;

6.3.5. documents proving that the office space, technical equipment, and software meet security and safety requirements;

6.3.6. business plan.

6.4. The Financial Regulatory Commission shall seek the Bank of Mongolia's consent prior to issuing a license for financial services to other members of a bank conglomerate.

## **Article 7. Prohibited activities for bank**

7.1. No bank shall engage in any activities other than the activities set forth in provisions 6.1, 6.2.1-6.2.6 of Article 6 of this Law. This provision shall exclude the temporary possession or ownership and sale of any property taken as collateral for purposes of recovering the loan or liquidation of debts; and leasing, renting or selling of any property for the purposes of recovering operational costs.

7.2. Shareholders, chairman and members of the Board of Directors, the Executive Director and officers of a bank shall not release and disclose to others, or use any information which is considered by the bank, its customers, and/or third parties as confidential, except in the following cases:

7.2.1. the individual to whom confidential information relates agreed in writing to disclosure;

7.2.2. the Bank of Mongolia, its supervisors and State Inspector of the Bank of Mongolia demanded in relation to performing their legitimate duties;

7.2.3. the court and prosecutor's office management lodged a request and/or the prosecutor's office accepted investigator's position of the anti-corruption authority and police department due to their case registration and investigation work requirements;

7.2.4. if the violation of laws of Mongolia is proven, at the request of an international law enforcement institution or Government of a foreign country which has concluded with Mongolia an Agreement on Legal Assistance;

7.2.5. the Financial Regulatory Commission demanded for supervising licensed activities and/or financial regulatory authority of a foreign country requested in line with the Financial Regulatory Commission's obligation under an international treaty.

7.2.6. provide information to the credit information database in accordance with law.

7.2.7. The chairman of the executive administration of court decision approved the request of the bailiff to obtain the bank account information on debtors who evades the testimony of the assets.

7.2.8. Tax and customs administration demanded with purpose of collecting customs and tax debts from specific debtors, in relation to performing their legitimate duties.

7.2.9. supervisor of Deposit Insurance Corporation demanded in relation to performing duties specified in Deposit Insurance law.

7.3. Confidentially requirements described in provision 7.2 of this Law shall not apply to inter-bank data on bank lending, information to be furnished under the law and agreement on credit bureau, reports and data set forth in Articles 37 and 38 of this Law, and information exchanged between the bank and the issuer of asset-backed securities.

7.4. In addition to prohibitions as defined in section 7.1 of this Law, the bank shall be prohibited to engage in the following activities:

7.4.1. carry out or participate in activities aimed at providing the bank, alone or together with others, a dominant position in the financial markets, or creating unfair preferential position to itself or any third party;

7.4.2. offer underwriting services to a bearer of financial obligation or its related party if its loan and/or other financial obligation to the bank and/or a member of the banking conglomerate is in default;

7.4.3. while offering underwriting services, extend a loan or equivalent financial services and/or issue a guarantee and/or warranty to the issuer and/or its related party;

7.4.4. purchase securities underwritten by a member of the banking conglomerate;

7.4.5. sell securities underwritten by itself directly or indirectly to members of the banking conglomerate and/or engage in related activities;

7.4.6. provide underwriting services to a legal entity that have overdue loans with a bank or non-bank financial institution;

7.4.7. execute transactions other than payment of financial obligations to entities which are unable to meet requirements specified in provision 18.1 of this Law in circumstances other than permitted by the Bank of Mongolia;

7.4.8. make false or misleading advertisements or statements relating to its activities;

7.4.9. make donations to political parties and coalitions.

## **Article 8. Bank advertisement**

8.1. Advertisements by the bank shall truly reflect its activities at a given time and shall be in conformity with the laws and legislation.

8.2. The Bank of Mongolia shall prohibit advertisement of the bank if it is considered to have the following contents:

8.2.1. If the bank's financial statements disclosed to the public contradict the actual financial position of the bank;

8.2.2. are not consistent with the legislation.

## **Article 9. Savings**

9.1. A bank may accept savings from citizens of Mongolia or foreign countries, or stateless persons (hereinafter referred to as "individuals") and/or legal entities at their request, hold on a contractual basis and pay an interest.

9.2. Any relations pertaining to accepting savings and savings insurance shall be regulated by a law.

## **Article 10. Loans**

10.1. A bank may extend loans to individuals or legal entities on its terms and conditions. The bank shall set lending rates on its own.

10.2. A bank may accept, under an agreement with the borrower and/or based on a court decision, the borrower's property, shares, and their dividends for payments of overdue loan principal and interest. This provision shall not apply to the case provided in provision 17.4 of this Law.

10.3. Lending activities of banks shall be regulated by a law.

## **Article 11. Payments and settlements services**

11.1. A bank shall offer all types of payments and settlements services to its customers on the basis of an agreement signed with the customer.

11.2. A bank shall transfer funds from the customer's account upon the latter's order and within the limits of remaining account balance. Transactions executed pursuant to a decision by the court and/or bank receiver, or a contract or payment order signed by the customer and in which the customer agrees to pay the debt without any dispute shall be regarded as transactions executed upon the customer's order.

11.3. Banks shall determine their fees and commissions for payments and settlements services.

11.4. Inter-bank settlements by banks shall be conducted through their accounts at the Bank of Mongolia. If permitted by the Bank of Mongolia, the bank may transfer the fund via its settlement account held in settlement agent accordance with the Law on National Payment System.

11.5. Payments and settlements activities of the bank shall be regulated by a law.

11.6. The fee for payment of value-added tax incentives is not included.

## **Article 12. Issuance of warranty and guarantee**

12.1. A bank may issue a guarantee and warranty to third parties on a contractual basis within the restrictions set out in provision 17.1-17.3 of this Law.

## **Article 13. Custody of valuables**

13.1. In rendering services for custody of valuables (valuables as regarded by customers) a Bank shall determine terms for the custody contract in accordance with the legislation.

## **Article 14. Foreign exchange payments and settlements**

14.1. Bank activities relating to the purchase and sale of foreign currencies and other financial instruments denominated in such currencies shall be regulated by a law.

## **Article 15. Issuing, accepting as collateral, purchasing and selling securities**

15.1. Bank activities relating to the issuance, sale and/or purchase of securities to be traded on the capital market the constraints described in provision 17.4 of this Law shall be regulated by an applicable law.



15.2. With the authorization of the Bank of Mongolia, a bank may issue, buy, sell or accept as collateral securities to be traded on the money market and maturing within one year. These securities shall not be classified as asset-backed securities.

## **Article 16. Criteria for banks**

16.1. A bank shall comply with the following requirements:

16.1.1. to maintain its reserve requirement and liquidity in the form and amount required pursuant to the regulations issued by the Bank of Mongolia and to safeguard customers' deposits and pay out and transfer funds on the first demand by a customer;

16.1.2. to comply with the size of share capital, capital adequacy, asset loss provision, loan loss provision, concentration of funding, foreign currency exposure and other prudential requirements set by the regulation and decision of Bank of Mongolia;

16.1.3. not to restrict customers from being customers of several banks;

16.1.4. not to make debit transactions from a customer's account without the customer's consent. This provision shall not apply to a transaction for the payment of tax debt, through undisputable procedures, from the current account of a taxpayer who failed to pay taxes within the timeline set by the law;

16.1.5. shall not demand the client to be serviced by other members of the bank conglomerate, its branch and representative office and obtain other others as a pre-condition for the bank's services.

16.2. A bank shall provide its customers with accurate information on its activities in accordance with accounting procedures and standard practices set by the Bank of Mongolia.

## **Article 17. Restrictions on banking activities**

17.1. The total value of loans, loan equivalent assets, guarantees, warranties and other contracts provided to one person and/or his/her related or connected persons shall not exceed 20 percent of the capital of the bank.

17.2. The total value of guarantees and warranties issued by a bank shall not exceed the value of the equity of the bank.

17.3. The amount of loans, loan equivalent assets, guarantees, warranties and other contracts issued to the bank's related party shall not exceed 5 percent of the bank's equity, and the total amount of such loans etc. not exceed 20 percent of the bank's equity. The following requirements must be met:

17.3.1. requirements to, interest rate and terms and conditions of loans, loan

equivalent assets, guarantees, warranties and other contracts shall not be concessional as compared with those of the bank's normal operations;

17.3.2. no loans shall be written, no loan equivalent assets formed, and no guarantees and warranties issued on the pledge of the bank's shares;

17.3.3. if the repayment of loans and loan equivalent assets and expiry of guarantees, warranties and other contracts were past-due for more than six months, or the total amount of loans, loan equivalent assets, guarantees, warranties and other contracts issued to the given related party exceeded 5 percent of the bank's equity, the related party shall not partake in the bank's management in any form

17.4. Except for circumstances set forth in provision 17.5 of this Law, the total amount of securities a bank can purchase shall not exceed 20 percent of the capital of the bank and 10 percent of the total amount of the shares issued by one company. This shall not apply to securities issued by the Government and the Central Bank and shares of legal entities engaged in credit information business.

17.5. The total amount of asset-backed securities a bank can purchase shall not exceed 50 percent of the bank's equity capital.

17.6. In estimating the limitation specified in 17.1 of this article, the Bank of Mongolia may exclude assets guaranteed and warranted by and secured under a risk sharing agreement with a financial institution with credit rating of "A" or higher level set forth by an international credit rating institution.

17.7. The Bank of Mongolia shall adopt the regulation on computing, ensuring, reporting and monitoring the limits stipulated in provisions 17.1-17.5 of this law.

17.8. Extending a loan to a controlling shareholder of the bank within a period of one year after starting of bank operations shall be prohibited.

17.9. Any transaction the bank entered into with a related person shall not have concessions compared to normal transactions with other persons, and transactions with conflict of interests shall be performed under the requirements and procedures stipulated in the relevant law.

17.10. Transactions which violated the articles 17.8 and 17.9 of this law shall be invalid.

17.11. If the bank exceeded the limit specified in provisions 17.1 – 17.5 of this article, the Bank of Mongolia shall deduct that amount in calculating the capital adequacy ratio of the bank.

### **CHAPTER III. INCORPORATING AND RE-ORGANIZING A BANK**

#### **Article 18. Incorporating a bank**

18.1. Any legal entity and individual except state and local government-owned legal entities (legal entities partially owned by the central and/or local government), non-governmental organizations, and their related parties shall be allowed to establish a bank. This provision does not apply to the Government's setting up a bank.

18.2. An approval is required from the Bank of Mongolia to establish a bank or its branch domestically and abroad.

## **Article 19. Criteria for bank founders**

19.1. Founders of a bank shall satisfy the following criteria:

19.1.1. to be licensed by and registered with authorities of a country, reports financial

statements on an annual basis and/or shorter frequency in accordance with the laws and regulations of the jurisdiction;

19.1.2. the individual and/or legal entity's financial operations must be subject to regular supervision by the authorities in accordance with relevant laws and regulations;

19.1.3. financial statements and reports should be subject to external audit by an audit firm, licensed under the laws and regulations of Mongolia or internationally recognized and reputable, at least once a year;

19.1.4. the fact of cash invested in the bank's paid-in capital being net income from own of the founder and/or its related party shall be indicated in financial statements and reports filed to the authorities of the jurisdiction of registration;

## **Article 20. Documents to be furnished**

20.1. In addition to documents required under Articles 17.1 and 21 of the Law on State Registration of Legal Entities, founders and shareholders of a bank shall furnish the following documents:

20.1.1. an application for a banking license;

20.1.2. founding agreement (not applicable in case of one founder);

20.1.3. the charter of the bank;

20.1.4. feasibility study for the bank;

20.1.5. name and address of founders and qualifying shareholders, and financial statements of last three years of their related parties audited by firms that meet the requirements stipulated in the Law;

20.1.6. detailed description of management, personnel, technical facilities and premises of the bank in the templates set by the Bank of Mongolia;

20.1.7. proof of the amount of capital invested in the bank, sources, and origin of the funds.

20.2. The Bank of Mongolia can request to submit additional documents within the framework of the required documents, if it considers the documents submitted pursuant to provision 20.1 of this Law are incomplete or unclear. The Bank of Mongolia may approach law enforcement agencies for reference and/or enquiry regarding the founders, shareholders, and proposed management of the bank.

20.3. Documents required in this law from bank founders, shareholders and their related parties must be certified by competent authorities of the jurisdiction of registration and internationally recognized bodies. These documents shall be a part of the documents required for founding a bank.

20.4. Issuing a permission to establish, reorganize, and/or dissolve a bank, and make an equity investment in a bank, and calculating and setting bank ownership restrictions shall be regulated by a regulation issued the Bank of Mongolia in conformity with this Law and other relevant laws.

## **Article 21. Bank Charter**

21.1. The Charter of an entity to be engaged in banking activities, items set forth in provision 16.2 of the Company Law and the following items shall be incorporated:

21.1.1. the amount of paid-in capital;

21.1.2. bank management and organizational structure;

21.1.3. terms of reference of shareholders and Board of Directors meetings.

21.2. Any amendments to the bank Charter shall be registered with the Bank of Mongolia within 14 days after a decision on such amendments was made.

## **Article 22. Establishing a bank, branch or representative office of a bank with foreign investment and requirements for its activities**

22.1. A legal entity seeking a banking license for a foreign-invested bank and its branch and/or representative office shall furnish the following documents to the Bank of Mongolia in

addition to those set forth in Article 20 of this Law while meeting the requirements described in Article 19 of this Law:

22.1.1. the decision of a foreign bank or financial institution to establish a bank, a bank branch or a representative office within the territory of Mongolia;

22.1.2. the permission from a competent authority of the jurisdiction to operate on the territory of Mongolia;

22.1.3. other documents required by other relevant laws and regulations.

22.2. Additional requirements on operations of a bank, bank branch and/or representative office established in accordance with law shall be set under a regulation of the Bank of Mongolia.

### **Article 23. Granting a banking license**

23.1. While reviewing an application for a banking license and other supporting documents, the Bank of Mongolia shall verify whether the following requirements are met:

23.1.1. whether the bank has capital paid in cash sufficient to run stable and efficient banking operations;

23.1.2. whether knowledge, education and experience of the Executive Director, members of the Board of Directors and other top managers are sufficient for conducting fair and profitable operations of a bank, and whether the Executive Director and members of the Board of Directors satisfy the criteria set out in provisions 32.1, 33.3, and 34.2 of this Law;

23.1.3. whether the bank will have an adverse impact on the country's economic security;

23.1.4. whether there is sufficient documentation to prove that cash invested in the bank's capital is obtained from legal activities as provided for in the Law on combating money laundering and terrorism financing;

23.1.5. whether the establishment of the bank is in any way related to money laundering and terrorism financing, or is to increase the risk of money laundering and terrorism financing.

23.2. The Bank of Mongolia shall accept an application for a banking license after verifying that the criteria specified in Article 19 and documentation requirements specified in Article 20 of this Law have been fully met. If additional information is required, the date on

which the additional documents are submitted shall be deemed to be the date of receipt of the application for a banking license.

23.3. The Bank of Mongolia shall accept the application for a banking license and make its decision within 60 days after receiving the application specified in 20.1 of this Law on whether to issue a license and give a written notice about its decision to the founder within 3 days.

23.4. The Bank of Mongolia may grant additional permissions described in Article 6 of this Law if a bank has soundly conducted operations granted by the license.

#### **Article 24. Refusal to grant a license**

24.1. The Bank of Mongolia shall refuse to grant a banking license and authorize capital investment in the following circumstances:

24.1.1. the requirements set forth in Articles 18-22, 23.1 and 36 of this Law are not met;

24.1.2. the charter of a bank is in contradiction with the legislation;

24.1.3. it is established that a bank that is to be incorporated is not able to have capital or proof of source for capital sufficient to comply with the requirements, or the materials submitted were false, or the capital was provided from a banking loan, or individuals for management positions of the bank do not satisfy the criteria set by this Law.

24.1.4. contradicts with relevant laws and decisions of financial regulatory authorities.

24.1.5. a bank has not informed the Bank of Mongolia of the identities of its up to 20 largest shareholders; shareholdings and the amount, total amount and size of their holdings, where there are no qualifying shareholdings.

#### **Article 25. Registration of banks**

25.1. Pursuant to articles 18-22 of this law, banks licensed by the Bank of Mongolia shall be registered in the state business registry.

25.2. To establish a bank unit the approval from the Bank of Mongolia shall be obtained. Approval for establishing a bank unit shall be recorded on the banking license of the head bank without issuing a separate registration.

25.3. Registration of a bank in the State Registry shall be announced publicly.

## **Article 26. Name of a bank**

26.1. The name of a bank shall consist of its own name and the word “bank”.

26.2. It is prohibited for entities not holding a banking license to use the word “bank” in its name.

26.3. The name and the location of a bank shall only be changed with the consent of the Bank of Mongolia.

26.4. A bank unit shall use the name of the head bank.

## **Article 27. Revocation of banking licenses**

27.1. The Bank of Mongolia shall revoke a banking license on the following grounds and announce it publicly:

27.1.1. upon a declaration of bank liquidation by competent authority;

27.1.2. unless otherwise provided by law, the BOM has decided that the bank is solvent or there are circumstances that will inevitably lead to its insolvency, or the bank did not meet the minimum capital requirement;

27.1.3. it was revealed after the registration that false documents have been submitted to obtain a banking license;

27.1.4. the bank did not engage in any banking activities for more than one year after its registration;

27.1.5. submitted false documents while making changes to the structure and paid- in capital;

27.1.6. failure of the bank to implement the measures and fulfill the requirements specified in article 48 of this law created a serious condition that may hinder the operations and solvency of the bank.

27.2. By revoking the banking license, all permissions for banking activities shall become invalid automatically.

27.3. If a banking license has been revoked or an application has been refused, the Bank of Mongolia shall not accept documents on a new application for a license within one year.

27.4. If the Bank of Mongolia has revoked a banking license due to reasons other than stated in 27.1 of this Law, the Board of Directors of the bank shall, within 30 days after and on the basis of such decision by the Bank of Mongolia, call for a shareholders meeting and shall issue a decision on liquidation of the bank.

27.5. The BOM shall count the bank insolvent or judge that the bank's insolvency is unavoidable if one of the following circumstances occur:

27.5.1. the bank is unable to pay out the money of depositors, customers and other authorized parties to demand the fulfillment of obligations at their first demand; or an audit has revealed that the bank can't pay out;

27.5.2. the bank is unable to conduct its operations due to its failure to meet prudential ratios;

27.5.3. the bank's liabilities exceeded its assets, or an audit has revealed that liabilities would exceed assets in a normal period possible.

## **Article 28. Primary conditions for reorganizing and liquidating a bank under shareholders meeting decision**

28.1. Provided that the Bank of Mongolia authorizes, the bank can be reorganized and/or liquidated upon a decision by the shareholders meeting.

28.2. The decision to reorganize and/or liquidate a bank shall contain the establishment of a reorganization and/or liquidation committee, inspections committee charged with the duty to review property and valuables in the bank's books, members of these committees, and selection of an audit firm.

28.3. To obtain an authorization to reorganize and/or liquidate the bank, the following documents shall be furnished to the Bank of Mongolia within 3 days after the shareholders meeting issued such a decision:

28.3.1. shareholders meeting resolution on bank reorganization and/or liquidation;

28.3.2. document indicating the need, modality, conditions, and timeline of bank reorganization and/or liquidation, actions to be taken by the bank in relation to cease of its operations, corresponding timelines and stages, audited financial statements reviewed at the shareholders meeting;

28.3.3. organizational structure, legal status, and location of the entity to be formed after the reorganization, types of operation and business plan of the bank, implementation plan of reorganization, other information on proforma balance sheet;

28.3.4. estimates of the financial outcome of the proposed bank reorganization and beginning balance sheet of the reorganized bank.

28.4. The Bank of Mongolia shall issue and disclose to the public its decision on the proposed bank reorganization and/or liquidation within 60 days after receiving the relevant documents.

28.5. In establishing the date of receiving the documents set forth in 28.3 of this Law, the Bank of Mongolia shall follow provision 23.2 of this Law.



28.6. The bank reorganization shall be commissioned once the Bank of Mongolia issues its authorization on the matter.

28.7. The bank shall notify its depositors, customers, and borrowers of the reorganization decision within 3 days after obtaining an authorization from the Bank of Mongolia.

28.8. The Bank of Mongolia may partake an intermediary role in bank reorganization such as merger and acquisition.

28.9. The Bank of Mongolia shall refuse issue its authorization if any of the following circumstances materialize:

28.9.1. the documents set forth in provision 28.3 of this Law were incomplete and/or fraudulent;

28.9.2. the documents set forth in provision 28.3 of this Law were in violation of the law;

28.9.3. the criteria set forth in Articles 19, 20 and 36 of this Law were not met;

28.9.4. the Bank of Mongolia deemed that the proposed reorganization/liquidation might negatively affect the customers' interests and financial sector stability.

28.10. The shareholders' meeting resolution shall be deemed void if the Bank of Mongolia refused to issue an authorization to reorganization and/or liquidation.

28.11. The bank shall be liquidated in accordance with relevant procedures pursuant to the Bank of Mongolia's authorization of the liquidation.

## **CHAPTER IV. BANK MANAGEMENT AND ORGANIZATIONAL STRUCTURE**

### **Article 29. Shareholders meeting of the bank**

29.1. The shareholders meeting shall be the supreme governing body of a bank. In case of a state-owned bank, the powers of the shareholders meeting shall be exercised by the Government and a body authorized by the Government.

29.2. The shareholders meeting shall discuss and resolve the following matters:

29.2.1. approve the bank charter, its amendments and revisions;

29.2.2. change the structure and size of equity;

29.2.4. reorganize the bank;

29.2.5. liquidate the bank;

29.2.6. review and approve the Board of Directors' annual report on bank operations;

29.2.7. review and approve the Board of Directors opinion regarding audited financial statements;

29.2.8. appoint, terminate the appointment of, and dismiss members of the Board of Directors upon receipt of Bank of Mongolia notice indicated in the article 32.3 of this law;

29.2.9. set out powers of the Chairman and members of the Board of Directors, institute the responsibility framework, remuneration, and terms of reference of the Board of Directors;

29.2.10. matters pertaining to the bank supervisor (Supervisory Board) shall be governed under Article 92 of the Company Law.

29.3. Votes of a legal entity and/or individual that do not meet the criteria set forth in Articles 19 and 36 of this Law at a shareholders meeting shall be deemed void. In this case, a decision from the shareholders meeting shall be deemed effective by majority of votes of other shareholders.

29.4. Other matters pertaining to calling for a shareholders meeting, delivering a notice, and the shareholders meeting decision entering into force shall be governed under Articles 60-74 of the Company Law.

### **Article 30. Procedure for convening a shareholders meeting of the bank at the initiative of the Bank of Mongolia**

30.1. If enforcement measures are being undertaken under the banking legislation, the Bank of Mongolia or its Conservator may call for an extraordinary shareholders meeting of the bank, if necessary.

30.2. The date and time of a shareholders meeting of the bank shall be announced 30 days prior to the meeting day, in case of a provisional administration, the meeting can be convened prior to the date provided above.

30.3. In case of a provisional administration, a shareholders' meeting and decision from the meeting shall become valid upon the conservator's vote and decision regardless of the shareholders right.

30.4. No shareholders meeting shall be convened if the bank is under Bank of Mongolia's receivership.

### **Article 31. Board of Directors of the bank**

31.1. A bank shall have a Board of Directors.

31.2. The Board of Directors of a bank shall have nine and more members.

31.3. The Board of Directors of the bank shall exercise the following powers:

31.3.1. set out, review, and amend the bank strategy, approve the organizational structure, risk management policy, annual budget, business plan, and performance targets;

31.3.2. appoint executive management of the bank upon approval by the Governor of the Bank of Mongolia;

31.3.3. define the powers and responsibilities of executive management, oversee its activities and approve its compensation package;

31.3.4. call for regular and extraordinary shareholders meetings;

31.3.5. issue an opinion regarding the matters set forth in provisions 29.2.6 and 29.2.7 of this Law and present it to the shareholders meeting for consideration;

31.3.6. form an internal audit unit in the bank independent from executive management, appoint its managers and staff, approve its budget and staffing, outline its terms of reference, and approve salaries and bonuses;

31.3.7. outline prudent governance policies and procedures of the bank and oversee their enforcement;

31.3.8. establish proper controls encompassing the bank's accounting, financial reporting, external and internal audit, risk management, financial and operational control, and compliance;

31.3.9. oversee the disclosure of financial statements specified in Article 37 and 38 of this Law and other information.

31.4. The terms of reference of the Board of Directors shall be governed under the charter of the bank and should incorporate the following duties of the Chairman and members of the Board of Directors:

31.4.1. perform duties duly within the powers established in the laws and regulations;

31.4.2. prioritize the interests of the bank and bank customers over one's private and that of the body that appointed;

31.4.3. not to benefit from profits secretly;

31.4.4. avoid a conflict of interest and inform the Board of Directors in case of the occurrence of a conflict of interest;

31.4.5. not to interfere with daily operations of the bank.

31.5. Issues pertaining to other matters such as convening a Board of Directors' meeting and resolutions from the Board of Directors meeting entering into effect shall be governed under Articles 76-79 of the Company Law.

31.6. The Bank shall deliver to the Bank of Mongolia certified copies of minutes and resolutions of shareholders and Board of Directors meetings, and documents capturing the count of votes at a shareholders meeting within 45 days from the decision of shareholders and Board of Directors meetings.

31.7. The internal audit unit's basic functions shall be to oversee the implementation of policies adopted by bank management, business plan and budget of the current year, and operational guidelines, and the accuracy of bookkeeping and financial statements, to safeguard assets, and to improve asset efficiency. It shall report its activities to the Board of Directors.

## **Article 32. Members of the Board of Directors of the bank**

32.1. Members of the Board of Directors shall meet the following criteria:

32.1.1. no overdue debt under a loan, warranty, and/or guarantee agreement;

32.1.2. no record of crimes against the economy, ownership rights, public security, vested interests, corruption, national and mankind security, and peace;

32.1.3. no conflict of ethical and business reputation with regard to overseeing the bank;

32.1.4. not have conflict of interest, and not adversely influence the decision making process of the bank if in a managerial position at professional institutions in the financial sector;

32.1.5. if the candidate was in a managerial position at a bank and/or non-bank financial institution when its license was revoked, three years should be passed;

32.1.6. if the candidate was subjected to an administrative penalty while being in a managerial position at an entity engaged in professional business on the financial market, three years should be passed.

32.1.7. have a degree in banking, finance, economics, law, information technology or corporate governance, and at least ten years of professional experience, five years of which worked in a managerial position at a bank and/or financial institution;

32.2. A member of the Board of Directors can be a shareholder of the bank.

### **Article 33. Independent members of the Board of Directors**

33.1. At least one-third of total members of the Board of Directors of the bank shall be independent members.

33.2. The regulation on nominating, appointing, and dismissing an independent member of the Board of Director of the bank shall be adopted by the Bank of Mongolia

33.3. An independent member of the Board of Directors of a bank shall meet the following criteria in addition to the ones specified in articles 32.1.1-32.1.6 of this law:

33.3.1. have a degree in banking, finance, economics and law, and at least ten years of professional experience, five years of which worked in a managerial position at a bank and/or financial institution;

33.3.2. has no qualified participation in the ownership of the bank or in a member of the banking conglomerate to which the bank belongs;

33.3.3. has not been a member of the management, except for an independent member of the Board of Directors of the bank or a banking conglomerate to which the bank belongs in the past five years; or has not been an employee of those in the past three years;

33.3.4. does not receive and has not received remuneration related to the bank's performance;

33.3.5. is not connected to the bank on any other ground which could prevent her or him from objectively and impartially supervising the operations of the bank and the work of management.

33.3.6. is not in a political or core public servant's position;

33.3.7. it is proven that bankruptcy or insolvency of a legal entity for which the person worked as a managerial official, was not caused in any form by the person;

33.3.8. is not a related person with the persons specified in articles 33.3.2-33.3.3 of this law;

33.4. The Bank of Mongolia shall adopt the regulation on establishing the status of a large client.

33.5. An independent member of the Board of Directors of the bank shall be on the audit and risk management committee and obliged to participate in approval of and vote on matters under the jurisdiction of these committees and conflict of interest deals stipulated in the Company Law.

33.6. The Board of Directors shall adopt the terms of reference of the audit and risk management committees.

#### **Article 34. Executive Management of the bank**

34.1. Executive management of the bank shall work under a contract and adhere to the following operational requirements:

34.1.1. give precedence to the bank's and its customers' interests over his/her own personal interests;

34.1.2. not to use any information about the bank and its customers, which is obtained during his/her service in the bank, for the benefit of personal or third party's interest;

34.1.3. make a written disclosure to the Board of any conflict of interest as soon as a conflict of interest becomes apparent. A conflict of interest shall exist whenever the Executive director or any of his/her related party has a direct interest about knowing financial situation of an entity that has business with the bank;

34.1.4. refrain from attending any discussions concerning his/her personal matters and interests;

34.1.5. manage the bank's day-to-day operations within his/her powers set by legislation and the Charter of the bank;

34.1.6. provide for conditions for bank staff to perform their duties without any conflict of interest;

34.1.7. establish and assess the performance of an internal control framework that ensures normal operations of the bank.

34.2. In addition to criteria provided in Articles 32.1.1-32.1.6, the Executive Management members shall meet:

34.2.1. have a degree in banking, finance, and economics, at least ten years of professional experience, five years of which worked in a managerial position at a bank and/or financial institution and have technical skills and experience;

34.2.2. not to have a conflict of interest or common interest with the bank, shareholder of the bank or a member of the Board of Directors of the bank;

34.2.3. shall not be an senior official of a legal entity that is engaged in non-financial activities and have a relation to other banks, banking conglomerate or the bank;

34.2.4. not worked in a managerial position of the Bank of Mongolia in the last two years;

34.2.5. not forfeited the right to run professional operations;

34.2.6. not seriously violated the banking legislation and any decision of the Bank of Mongolia.

34.3. Executive management members must not be a member of the Board of Director's audit, remuneration, or nomination committee, nor shall have a voting right for decisions to select, appoint, dismiss the executive director, to define and monitor the power of the executive director.

34.4. An authorized official of the bank shall be held accountable as set forth in Articles 84 and 85 of the Company Law.

## **CHAPTER V. BANK CAPITAL AND SUPERVISION**

### **Subchapter One**

#### **Bank equity, financial statements**

#### **Article 35. Bank equity**

35.1. The bank shall have its own equity, which shall be defined in accordance with the accounting regulation approved by the Bank of Mongolia.

35.2. Paid-in capital of the bank shall consist of cash contributions by bank Shareholders; its minimum amount shall be set by the Bank of Mongolia taking into consideration the country's economic situation, exchange rate developments, bank solvency, influence on the banking system and peculiarities of bank operations.

35.3. Unless otherwise stated in this law, the bank shall pay dividends only if it continues to meet prudential requirements set by the Bank of Mongolia after the distribution of dividends.

35.4. The bank's equity shall be defined as net of its profits or losses and excess or shortfall of asset loss provision and loan loss provision.

35.5. The regulation on classification of bank loan provisioning and disposal of provision fund shall be set by the Bank of Mongolia jointly with the central public administrative body in charge of financial issues. Bank shall classify its asset and provision in accordance with the regulation.

35.6. The regulation on provisioning and disposal of provisions for possible losses of other assets and activities except those specified in 35.5 of this Law shall be set by the Bank of Mongolia.

35.7. Procedures for setting up other funds except those stated in 35.5 and 35.6 of this Law shall be set by each bank.

35.8. Shareholders of the bank shall undertake financial liability and cover the loss to the amount of their contribution to the bank capital.

### **Article 36. Issuing a permission to own bank shares**

36.1. The amount of bank shares and securities classified as shares to be owned by anybody alone and jointly with related parties shall not exceed 20% of total shares issued by the bank.

36.2. The restriction set forth in 36.1 of this law shall not apply in the following circumstances:

36.2.1. A special purpose bank established in accordance with Article 58 of this law;

36.2.2. the government's share in a bank that was recapitalized by the government in accordance with the Law on Ensuring Banking Sector Stability.

36.3. The bank shall seek for approval from the BOM on each occasion of a change in the size and structure of the bank equity and new controlling shareholders and issuance of new shares and securities classified as shares, and relations pertaining to notification and getting approval on a change in the amount and structure of shares owned by the controlling shareholder in accordance with requirements set by the BOM shall be regulated as set forth 36.11 of this law.



36.4 In getting approval specified in 36.3 of this law, the bank is obliged to verify source of funding and fulfillment of legal criteria of an individual and those criteria should be regularly satisfied.

36.5. The documents required as set forth in 36.4 of this law must be accurate and reasonable and the ground specified in 27.1.5 of this law shall be established if these requirements were not met.

36.6. The BOM shall receive a request for approval of a change in the amount and structure of shares of a controlling shareholder of the bank, and proposed issuance of additional shares and securities classified as shares and issue a decision to approve or reject the request within 60 days after requirements and criteria set forth in this article of the this law are met and documents are furnished completely. The decision shall be informed to the bank.

36.7. If the BOM did not approve the request to endorse a controlling shareholder and/or make changes to the amount and structure of shares of a controlling shareholder, or the requirements and criteria set forth in this law were not met, those shares shall not have voting rights and not be paid dividends.

36.8. The BOM shall deduct the amount of unapproved shares and securities classified as shares as set forth in 36.7 of this law, from the bank capital and the shareholder is obliged to sell and transfer them within 30 days starting from the last purchase until the legal limit is met.

36.9. The requirements set forth in this Article shall equally apply to an individual, legal entity, and their related parties specified in Articles 19 and 20 of this Law, incorporating a bank and/or owing bank shares and other securities classier as shares.

36.10. The securities registry and depository shall deliver detailed information on the registration of bank shareholders consistent with the regulations to the BOM.

36.11. The BOM shall adopt regulations on making changes to the amount and structure of bank equity, issuing new shares and securities classified as shares, offering shares to the public, selling and transferring shares to others, other similar deals and qualifying a new controlling shareholder and changes to the amount and structure of bank controlling shares in accordance with 36.3 of this Law in collaboration with the FRC.

36.12. It shall be prohibited for the bank shareholder to use as collateral and sell shares and securities classified as shares back to the bank without the BOM's approval.

36.13. It shall be prohibited for the individual and legal entity to own bank shares indirectly using names of others.

36.14. It shall be prohibited to sell shares of a bank that was established in accordance with Article 22 of this law to parties other than those approved by the BOM.

36.15. It shall be prohibited for the controlling shareholder of a bank and his/her related party to be a controlling shareholder of another bank.

36.16. Bank shares shall be purchased in cash; this requirement shall not apply to the conversion of liabilities, subordinated debt and other securities classified as shares in accordance with this law into shares.

36.17. The bank shall furnish the BOM with the information and relevant documents that identifies beneficial owners of shares held by controlling shareholders of the bank; the information shall be updated in due course whenever the beneficial owner changes.

36.18. After reviewing the information on the beneficial owner of the bank, the BOM shall identify the party that will be licensed in accordance with section 36.3 of this law and inform the bank accordingly.

36.19. The controlling shareholder of the bank shall meet the following criteria:

36.19.1. shall not be the defendant in a bankruptcy case or authorized official of a defendant legal entity;

36.19.2. have no record of crimes against the economy, ownership rights, public security, interests, corruption, national and mankind security, and peace;

36.19.3. have a financial capacity;

36.19.4. if the controlling shareholder is a legal entity, the financial conglomerate of the bank shall have a structure that allows supervision by the BOM;

36.19.5. have proven the beneficial owner of the shares;

36.19.6. him/herself and beneficial owner shall not be a high-ranking state official.

## **Article 37. Financial statements**

37.1. Financial statements of a bank and banking conglomerate shall consist of a balance sheet, income statement, cash flow statement, interpretations and explanatory notes.

37.2. Financial statements of a bank, and other members of the bank conglomerate and banking conglomerates shall meet the following requirements:

37.2.1. financial statements shall be prepared in accordance with accounting principles adopted by the Bank of Mongolia in accordance with international standards;

37.2.2. a document with dates officially certifying that the financial statements are prepared accurately in accordance with 37.2.1 of this Law and stamped and signed

by the Chairman of the Board of Directors, executive management and other relevant officials.

37.3. The bank shall submit to the Bank of Mongolia its monthly financial statements by the 10th of succeeding month and the bank, members of the bank conglomerate or parent company their quarterly financial statements on a consolidated and individual basis by the end of the first month of succeeding quarter.

37.4. The Bank of Mongolia reserves the right to request any additional evidence and documents related to financial statements of a bank, and other members of the bank conglomerate.

37.5. A regulation on preparing consolidated financial statements of banking conglomerates shall be adopted by the Bank of Mongolia jointly with the Financial Regulatory Commission and the central public administrative body in charge of financial matters.

37.6. The bank shall maintain a standard back-up system with archives of physical and electronic data for protecting its banking and financial operations database from force majeure factors and other threats.

### **Article 38. Disclosure of financial statements and other information of a bank**

38.1. The bank shall disclose to the public through the media, its quarterly financial statements that meet the requirements set forth in 37.2 of this Law in the first month of the succeeding quarter, and audited annual financial statements in the first quarter of the next year.

38.2. In addition to the statements stated in 38.1 this Law, the bank shall disclose the following information to the public through publication and/or posting on the website within five days after the decision was made:

38.2.1. performance report certified by the signature of Chairman of the Board of Directors and executive management of the bank;

38.2.2. organizational structure and legal status of the legal entity, structure and composition of shareholders;

38.2.3. financial and accounting systems, and internal audit framework;

38.2.4. names of qualifying shareholders, members of the Board of Directors, executive director and its deputy, chief accountant, managers of departments and divisions, and members of the Supervisory Board;

38.2.5. form, timeframe, and implementation approach of reorganizing the bank, organizational structure, legal status, and location of the legal entity to be formed, types of activities the bank will engage in, primary documents related to financial operations;

38.2.6. loans, L/C, other liabilities, works and services to the bank's related parties;

38.2.7. other information deemed necessary by the Bank of Mongolia to assess the bank's risks.

38.3. The Bank of Mongolia shall monitor the accuracy of the bank's financial statements and information disclosed to the public and/or posted on the website and require the bank to correct the financial statements and information if they were not disclosed in accordance with the relevant regulations or incorrect and/or with mistakes.

38.4. The information set forth in 38.2.5 of this Law shall be disclosed to the public upon the Bank of Mongolia's authorization of the reorganization.

38.5. In accordance with the relevant laws and regulations, the bank shall inform to the public the information established by the Financial Regulatory Commission and an institution for securities trading.

#### **Article 39. Reporting of the bank's financial statements and other necessary information**

39.1. The bank, member of a banking conglomerate, their competent officials and employees are obligated to disclose in a complete and accurate manner to the Bank of Mongolia and supervisors of the Bank of Mongolia their financial statements, primary financial documents and their verifying documents, information, data and documents regarding management of the bank that are required to be compiled as stated in the relevant legislations, and the comprehensive list which details the equipment, tools, software and sub-software used in their financial operations, their precise locations as well as their passwords for access to ensure independent supervision.

39.2. Bank management, its related party and its competent officials and staff shall make every effort to allow supervisors of the Bank of Mongolia to exercise their regulatory duties.

39.3. If documents, information and data requested by the Bank of Mongolia and its supervisors under relevant legislation are deemed unavailable, the bank's related parties, competent officials and employees shall be obliged to send a written notification.

#### **Article 40. Auditing financial statements**

40.1. A bank, and other members of the bank conglomerate shall have their financial statements and other required documents audited by an audit firm (auditor) at least once a year.

40.2. The audit firm (auditor) shall present its audit opinion on financial statements and documents to the Board of Directors and Supervisory Board.

## **Article 41. Submission of an auditor's opinion to the financial regulatory authority**

41.1. An audit firm (auditor) shall submit the original copy of its final opinion to the audited bank and the Bank of Mongolia within the first half of a year.

41.2. An audit firm (auditor) shall inform the Bank of Mongolia of its opinion within five days if the following conclusions are made based on documents provided by the bank:

41.2.1. the bank may experience a serious financial difficulty soon due to insolvency or possible insolvency;

41.2.2. if it considers that the bank staff was engaged in unfair, illegal operations, which had a negative impact on the financial situation of the bank.

41.3. An audit firm (auditor) shall inform in writing the Bank of Mongolia and the Financial Regulatory Commission within five days if it reveals in a bank a situation specified in 41.2 of this Law and a violation of the regulation on large and/or conflict of interest deals specified in the Company Law.

## **Article 42. Tax payment**

42.1. Banks shall pay taxes according to relevant laws and regulations.

## **Subchapter Two Supervision**

## **Article 43. Bank Supervisory powers of the Bank of Mongolia**

43.1. Related bank, financial institution, individual or legal person shall be obligated to provide all supporting materials, records, books, reports and other documentation relevant as demanded by the Bank of Mongolia.

43.2. The Bank of Mongolia shall have the following powers in carrying out supervisory functions:

43.2.1. set and enforce capital requirements on the bank;

43.2.2. apply a specific procedure on classification of bank assets, provisioning and disposal of provision funds in terms of own funds to type and level of exposures;

43.2.3. hold additional capital above the regulatory minimum capital set by the Bank of Mongolia and this law and increasing provisions;

43.2.4. adopt regulation on, make respective decision and realize implementation of the measures specified in article 48 of this law;

43.2.5. restrict and suspend operations, dissolve a bank unit that poses excessive risks to the soundness of a bank and give recommendation to transfer some functions of the bank to others;

43.2.6. take measures to reduce the risk level of the bank;

43.2.7. use net profits to increase bank equity;

43.2.8. impose specific liquidity requirements;

43.2.9. report all information and data as required and according to a time schedule specified;

43.2.10. meet conditions, requirements and criteria specified in the legislation;

43.2.11. apply corporate governance principles specified in a regulation issued by the Bank of Mongolia;

43.2.12. assign a duty with specific time period to Board of Directors to suspend or dismiss executive management in the event of a violation by the bank of this law, regulation or decision adopted by the Bank of Mongolia, and if the obligations were not fulfilled by the fixed date, dismiss executive management from office;

43.2.13. In necessary circumstances, carry out a joint audit with other specialized bodies.

43.3. When deemed as necessary, the Bank of Mongolia may carry out a review of the quality of banks' assets and run stress test, and, based on result of which, take the necessary measures to increase equity capital and or to require to provide additional provisions.

43.4. The Bank of Mongolia shall cover the costs associated with review and test specified in provision 43.3 of this law for assessing the bank operations.

43.5. The Bank of Mongolia together with the Financial Regulatory Committee shall determine criteria for prudential ratio on financial capacity and solvency and requirements for management of the banking conglomerate.

#### **Article 44. Conducting consolidated supervision**

44.1. While conducting specific supervision of operations of a member of the banking conglomerate, the Bank of Mongolia shall perform consolidated supervision jointly with the central public administrative body in charge of financial matters and Financial Regulatory Commission and consolidate and assess financial statements of entities involved.

44.2. Relations pertaining to the commissioning of consolidated supervision on members of a banking conglomerate, preparation and reporting of their financial statements

and other relevant information, and performing examination shall be regulated under a regulation adopted by the Bank of Mongolia jointly with the Financial Regulatory Commission and central public administrative body in charge of financial matters.

44.3. In case where a member of the banking conglomerate is registered and/or domiciled abroad, the Bank of Mongolia, for conducting consolidated supervision and exchange of necessary information, may cooperate effectively by concluding an agreement and/or memorandum of understanding with financial regulatory authority of that country.

44.4. The consolidated supervision specified in article 44.1 of this law shall be performed in the following manner:

44.4.1. members of banking conglomerate subject to consolidated supervisions shall be selected.

44.4.2. financial capacity and solvency of members of the banking conglomerate subject to article 44.4.1 of this law, flow of funds between them, investments, liabilities, receivables, and loans between them, relationship of their other financial obligations and transactions, and exposure at the banking conglomerate level shall be assessed based on operational reports, financial statement and other information.

44.4.3. compliance with prudential ratios and other requirements on the financial capacity and solvency of the bank and members of the banking conglomerate enforced by the financial regulator shall be assessed individually and in consolidated manner and reported.

44.5. A member of the banking conglomerate shall be obliged to submit the information required by the Bank of Mongolia, within the pre-determined date, through its bank member.

#### **Article 45. Records on related parties and banking conglomerates**

45.1. The bank shall maintain a database on its related parties, their loans, loan equivalent assets, guarantee, and warranty.

45.2. The bank shall furnish to the Bank of Mongolia the information in the database set forth in 45.1 of this Law within five days after the bank incorporation and inform the Bank of Mongolia of changes in the database within three days.

45.3. Information on a member of the banking conglomerate and the bank's related party and changes thereof shall be furnished to the Bank of Mongolia by the bank in accordance with relevant regulations within a week after the changes were made.

45.4. Central administrative agency in charge of state registration shall furnish at request of the Bank of Mongolia and bank with information to identify related party of a participant in conglomerate.

## **Article 46. Exclusion from consolidated supervision**

46.1. The Bank of Mongolia may exclude a member of the banking conglomerate from consolidated supervision in the following cases:

46.1.1. type and size of operations is deemed to be minimal or no effect to the bank's financials and solvency;

46.1.2. exclusion of that legal entity causes no hindrance to appropriate implementation of consolidated supervision.

46.2. The Bank of Mongolia shall notify of its decision to exclude from consolidated supervision to the bank, its parent company and the member of the banking conglomerate.

## **CHAPTER SIX ENFORCEMENT MEASURE Subchapter One Bank stabilization and resolution plan**

### **Article 47. Bank recovery and resolution plan**

47.1. All banks shall prepare and submit to the Bank of Mongolia, within the deadlines specified by the latter, a recovery plan approved by the Board of Directors. The recovery plan shall include a range of scenarios of severe macroeconomic and financial stress relevant to the bank's specific conditions and identify measures to correct under each scenario.

47.2. The plan specified in article 47.1 shall cover the banking conglomerate to which the bank belongs to, its headquarter and operations.

47.3. Where the recovery plan submitted by the bank does not meet the requirements stated in article 47.1 of this law, the Bank of Mongolia shall demand an amendment of the plan from the bank.

47.4. If the bank fails to amend the recovery plan in line with the article 47.3 of this law, or if the Bank of Mongolia considers the plan unimplementable, the Bank of Mongolia may in particular instruct the bank to:

47.4.1. reduce the risk profile of the bank;;

47.4.2. implement timely measures to recapitalize by issuing shares and convertible securities and providing loans and to improve liquidity;

47.4.3. review the banks strategy and business plan and strengthen key functions of the bank;

47.4.4. review the bank management and organizational structure;



47.4.5. adopt any other course of action as the Bank of Mongolia may deem necessary.

47.5. The Bank of Mongolia shall prepare and approve bank's resolution plan.

47.6. Bank resolution plan shall have contents as follows:

47.6.1. relevant scenarios including that the event of failure may be either limited to the relevant bank, as well as system wide events;

47.6.2. appropriate resolution measures to address events specified in article 47.6.1 of this law

47.7. The Bank of Mongolia shall set a regulation on preparing, approval and implementing the plan stated in sections 47.1 and 47.5 of this Article.

## **Subchapter Two Early Intervention**

### **Article 48. Early Intervention**

48.1. The Bank of Mongolia shall take following measures against a bank that violates or is likely to violate any law, regulation, rule or instruction issued by the Bank of Mongolia, or fails to meet the requirements of banking license and engages in unsafe or unsound banking operations:

48.1.1. require the bank to implement remedial measures to address the non-compliance and make a reminder;

48.1.2. assign timed tasks to address the non-compliance;

48.1.3. require implementation of the bank's recovery plan and restoration of liquidity levels considered appropriate;

48.1.4. require the bank to obtain additional capital funds within a time period specified;

48.1.5. require the reinforcement of the bank's measures for the purposes of corporate governance, organization, operations, risk management and internal control;

48.1.6. require a bank to limit the variable remuneration for its senior managers, when this compensation is inconsistent with the maintenance of a sound capital base, as determined by the Bank of Mongolia;

48.1.7. subject certain transactions or certain activities to the prior approval of the Bank of Mongolia;

48.1.8. restrict the size of and changes in bank assets and liabilities or task to diversify the assets;

48.1.9. prevent the bank from acquiring a capital or starting a bank branch;

48.1.10. require the bank partially or fully cease banking operations;

48.1.11. require to sale property or to liquidate bank unit;

48.1.12. dismiss from office the Executive Manager;

48.1.13. suspend, terminate and or dismiss the member of the Board of Directors;

48.1.14. suspend voting rights of qualifying shareholders if the bank fails to implement the measures set forth in Articles 48.1.1-48.1.13 of this Law.

48.1.15. take provisional administration measures;

48.1.16. other measures deemed as necessary by the Bank of Mongolia.

48.1.17. Revoke the banking license based on grounds set forth in Article 27 of this law.

48.2. When taking the measures provided in this paragraph, the Bank of Mongolia shall take into account the principles of treatment that adequately suits the non-compliance, circumstance or need.

48.3. The adoption of the measures as established in the previous paragraphs is without prejudice of the Bank of Mongolia's power to impose a financial penalty provided for in this or another law.

48.4. The Bank of Mongolia shall inform the Deposit Insurance Corporation of the adoption of any early intervention.

### **Subchapter Three Provisional administration**

#### **Article 49. Imposition of provisional administration**

49.1. Where the Bank of Mongolia considers that preventative measures prescribed in article 48 of this law are not adequate for fulfilling the objectives of enhancing the operations and recovering reliable and sustainable governance of the bank, or in the case of a circumstance stated in article 3.1.16 of this law, the Bank of Mongolia may resolve to implement provisional

administration at the bank and appoint a commissioner to manage the provisional administration.

49.2. The bank of Mongolia shall appoint a commissioner to manage the bank /here-in-after referred to as “commissioner”/ for a term of up-to one year and the operational guideline of the commissioner shall be established by the Bank of Mongolia in conformity with this law.

49.3. Bank shall cover operational expenses incurred by implementation of the provisional administration of the bank.

## **Article 50. Decision on provisional administration**

50.1. The Bank of Mongolia’s decision on imposing a provisional administration on the bank shall include the following matters:

50.1.1. the name, location and address of the bank;

50.1.2. the grounds for imposing a provisional administration;

50.1.3. the date of commencement and the duration of the provisional administration;

50.1.4. a list of restrictions to be imposed on bank operations;

50.1.5. the full name of the commissioner.

50.2. The Bank of Mongolia may disclose to the public its decision on imposing a provisional administration.

## **Article 51. Appointment of a commissioner**

51.1. The Bank of Mongolia may appoint its employee and/or other bodies as a commissioner to manage the bank during the provisional administration.

51.2. Remuneration of the commissioner shall be determined by the Bank of Mongolia and covered by the bank under provisional administration.

51.3. The commissioner shall conduct his/her activities in compliance with laws and regulations and other regulations and guidelines issued by the Bank of Mongolia pursuant to this Law.

51.4. The Bank of Mongolia shall have the right to replace the commissioner.

## **Article 52. Actions to be taken during provisional administration, rights and duties of commissioner**

52.1. During the provisional administration, the following actions shall be taken by the Bank of Mongolia:

52.1.1. temporarily transfer of bank management rights to the commissioner;

52.1.2. take measures for verifying accounting and financial statements of the bank.

52.1.3. In necessary circumstances, suspend the voting rights of a bank shareholder.

52.2. The commissioner shall have the following rights and duties:

52.2.1. make an independent decision with respect to all activities of the bank;

52.2.2. if necessary, partially or fully suspend fulfillment of obligations with respect to deposits during the provisional administration;

52.2.3. amend or terminate loan, deposit or other agreements between the bank and its customers that contain conditions that are not consistent with general terms and conditions and which have had an adverse impact on the bank interests;

52.2.4. conclude agreements on behalf of the bank;

52.2.5. lodge a claim on behalf of the bank;

52.2.6. terminate and/or amend employment contracts, and if necessary, hire temporary employees;

52.2.7. change the bank's equity size and structure to comply with capital adequacy requirements;

52.2.8. change the structure and size of share capital;

52.2.9. other consistent with the law.

52.3. The bank and its branches and units shall be obliged to implement decisions of the commissioner.

52.4. Executive management of the bank under provisional administration shall report his/her performance and income disclosure to the commissioner in accordance with relevant regulations.

52.5. All transactions made on behalf of the bank and at the expense of the bank without the formal consent of the commissioner shall be considered invalid.

52.6. The Bank of Mongolia shall terminate the provisional administration and lift all or part of restrictions imposed on the bank's activities when the bank is recovered.

52.7. Amendments made to the charter of the bank during the provisional administration shall remain in force.

52.8 The commissioner shall be liable for any losses arising from his/her wrongful acts and not be liable for losses related to common bank risks.

52.9 The bank and its branches and units shall be obliged to implement decisions of the conservator. The Bank of Mongolia shall be responsible for liabilities arising from the compliance of such a decision.

#### **Subchapter four Bank resolution**

#### **Article 53. Power to adopt resolution measures, and principles**

53.1. The Bank of Mongolia shall have a power to adopt a decision to carry out a resolution of a systemically important bank, subject to the grounds and regulations provided in this law.

53.2. In implementation of resolution measures of a bank, the Bank of Mongolia shall adhere to the principles of securing financial stability, prompt and effective actions, minimizing government expenses and safeguarding the interests of depositors and customers.

53.3. Bank resolution measure, its implementation and preventative measures and its implementation shall be analyzed and overseen separately from the supervisory functions and measures of the Bank of Mongolia.

#### **Article 54. Scope and conditions for the taking of resolution measures**

54.1. If any of the grounds were established, the Bank of Mongolia is authorized to adopt the resolution measures specified in Article 55 of this law:

54.1.1. the situation of the bank is such that it is in insolvency or likely to go insolvent;

54.1.2. supervision report of the Bank of Mongolia indicated that the bank cannot further function normally.

54.2. Scope of bank resolution regime shall comprise of the bank and the conglomerate to which the bank belongs to.

54.3. In implementing bank resolution measures, the BOM shall not revoke the banking license.

54.4. The Bank of Mongolia shall inform the Deposit Insurance Corporation and members of the Financial Stability Council whenever a decision is taken to apply the provisions of this Subchapter.

#### **Article 55. Instruments for bank resolution measures**

55.1. The Bank of Mongolia shall use the following instruments for implementing resolution measures.

55.1.1. transfer of the assets, and liabilities of a bank;

55.1.2. establish a special purpose bank;

55.1.3. change the structure and size of equity;

55.1.4. convert debts into ownership instrument.

55.2. No shareholders meeting and authorization from bank shareholders and creditors shall be required for taking bank resolution measures and use of instruments specified in provision 55.1 of this law.

55.3. When taking bank resolution measures, the instruments specified in provision 55.1.3 of this law shall be taken into account as a priority consideration.

55.4. The Bank of Mongolia shall adopt a procedure on taking and implementation of bank resolution measures pursuant to this Law.

No shareholders meeting and authorization from bank shareholders and creditors shall be required for taking bank resolution measures and use of instruments specified in provision 55.1 of this law.

## **Article 56. Implementation of resolution measures**

56.1. Bank resolution measures shall be implemented by an External administrator appointed by the Bank of Mongolia.

56.2. External administrator shall meet the following requirements:

56.2.1. possessing professional knowledge and experience as well as professional ethics and proficiency in area of banking operations;

56.2.2. no criminal record;

56.2.3. no overdue loan from this bank;

56.2.4. no related party relation with the bank shareholders, chairman and members of the Board of Directors, executive management or other employees;

56.2.5. if the External administrator is a legal entity, should have property and financial resources sufficient for fulfilling its duties

56.3. The remuneration of the External administrator shall be set by the Bank of Mongolia.

56.4. The External administrator shall comply with decisions issued by the Bank of Mongolia.

56.5. Upon the appointment of a External administrator, full powers of the bank, its management and managerial official and disposal right of the bank's assets shall be assigned to the External administrator.

56.6. Duration of bank resolution shall be ninety (90) days, which may be extended two times for equal periods.

56.7. The External Administrator can conduct an appraisal of assets and liabilities by an external, impartial and professional body according to respective standards and requirements.

56.8. External administrator shall in addition to implement the resolution measures pursuant to this law, have the following full powers:

56.8.1. to change or suspend payback period of bank liabilities;

56.8.2. to terminate financial contracts and agreements;

56.8.3. to demand the headquarter of the banking conglomerate to which the bank belongs to invest into the bank;

56.8.4. other powers stated in provision 69.1 of this law.

56.9. External administrator shall be accountable and report to the Bank of Mongolia.

56.10. Compensation of an administrator and related expenses incurred by him or her shall be paid by the bank, or when necessary paid by the Bank of Mongolia that shall recuperate such compensation from the relevant bank.

## **Article 57. Transfer of the bank assets and liabilities**

57.1. The External administrator shall transfer the bank assets and liabilities to an authorized bank.

57.2. For the purposes of realizing the transfer specified in section 57.1 of this law, valuation conducted under this law shall be used.

57.3. The Bank of Mongolia shall determine the nature, form and amount of financing necessary by taking into account the administrator's position.

57.4. The decision that determines the transfer the bank produces effects regardless of any prior contractual agreements or decisions made with respect to assets, liabilities, off-balance sheet items and instruments of ownership of the bank.

57.5. Transfer of the bank may not constitute grounds for exercising any early termination or suspension by the bank of contractual agreements established with other parties.

57.6. Following conditions shall be met in exercising the measures stated in article 57.1 of this law:

57.6.1. transfer collaterals securing liabilities together with other rights accompanied to secure payback of the liabilities;

57.6.2. transfer all of the rights and liabilities protected under a netting clause contained in an eligible financial contract such as interest rate swaps, foreign exchange swaps and foreign exchange options, in addition to any other instruments specified by the Bank of Mongolia.

57.7. When assets of a bank are transferred under measures specified in this subparagraph, creditors of the bank under resolution whose claims are not transferred and who will receive less than they would have received if the bank under resolution had been liquidated without transferring assets or liabilities as determined by the Bank of Mongolia, shall have a right to claim compensation for the difference.

#### **Article 58. Special purpose bank**

58.1. External administrator is authorized to establish a special purpose bank under conditions and requirements of the law for the purposes of implementing the resolution process.

58.2. Term of permit to establish a special purpose bank shall be up to 3 years.

#### **Article 59. Change equity structure and size**

59.1. External administrator may issue following measures to decrease bank losses and debts and increase equity:

59.1.1. convert capital instruments into shares;

59.1.2. Revise the bank equity structure and size;

59.1.3. merge and allot shares;

59.1.4. other measures required to reduce the bank losses and debts and increase equity capital.

59.2 Where the principal amount of a relevant capital instrument is written down under provision 59.1 of this law, the reduction of that principal amount shall be permanent and the holder of the relevant capital instrument that is written down shall not have any claim over such reduction.



## **Article 60. Bail-in**

60.1. External administrator may convert non-equity liabilities of the bank under resolution into shares for the purposes to recapitalize a bank or implement measures specified in articles 59.2 & 57.1;

60.2. The following categories of non-equity liabilities of the bank may not be included in the conversion specified in Section 60.1 :

60.2.1. insured deposits;

60.2.2. secured liabilities;

60.2.3. claims arising from the holding of client assets or client money that are segregated by articles 6.1.6 & 6.1.7 of this law from the remainder of the bank's assets;

60.2.4. claims with an original maturity of less than seven days owed to banks that are not part of the same conglomerate;

60.2.5. claims with a remaining maturity of less than seven days owed to payments and settlement systems or their operators;

60.2.6. claims to employees in relation to accrued salary, pension benefits or other fixed remuneration;

60.2.7. claims to providers of goods or services that are critical to the functioning of the bank under resolution;

60.2.8. payables to tax and social security authorities;

60.2.9. payables to the Deposit Insurance Corporation;

60.2.10 Other debts, the Bank of Mongolia sets not to convert.

60.3. Bail-in circumstances, criteria, requirements and guidelines shall be prescribed by the procedure specified in Section 55.4 of this law.

## **Article 61. Funding sources of resolution measures**

61.1. The Government, to preserve stability of the banking and financial system, may grant funding necessary for implementation of resolution measures by means such as refinancing the bank; provisioning shareholding capital of a special purpose bank; acquiring debt instruments of the bank; issuing a loan, or guarantee; or investing in bank stabilization fund.

61.2. Regulation on terms and conditions, amount and granting of the funding specified in the article 61.1 of this law shall be adopted by the Cabinet based on the proposal of the Bank of Mongolia and State administrative body in charge of finance affairs.

61.3. Loan with following conditions may be granted where the Bank of Mongolia considers that issuance of such loans will not have contrary effect against its main objectives:

61.3.1. with special terms of interest;

61.3.2. for a period of ninety (90) calendar days that may be renewed once for the same period; and;

61.3.3. against adequate collateral as defined by the Bank of Mongolia;

61.3.4. secured by guarantee issued by the Government.

## **Article 62. Bank Stabilization Fund**

62.1. The Bank of Mongolia may provision a fund of monetary assets, necessary for improving and stabilizing financial capacity of bank and implementing resolution measures (here-in-after referred to as “Fund”) and dispose in the following manner under relevant regulations.

62.1.1. providing guarantees relevant to resolution measures;

62.1.2. extend loans;

62.1.3. purchase assets;

62.1.4. making investment to the special purpose bank;

62.1.5. payment of compensation to shareholders or creditors in accordance with this Law;

62.1.6. payment of capital shortage and difference required for realization of the resolution measures

62.2. Idle capital of the Fund may be invested.

62.3 The Bank of Mongolia may delegate management of the assets of the Fund to a legal entity, authorized in or outside of Mongolia for business operations on securities market and performance of such affairs, that has a proven creditworthiness, specifically the extensive experience and achievements in managing such funds.

62.4. Assets of the Fund shall be separately managed from other assets and funds of the Bank of Mongolia.

62.5. The funds of the Fund shall be managed in a way that ensures permanent and immediate availability of funds for financing of resolution measures undertaken against the banks.

### **Article 63. Assets and liabilities of the Fund**

63.1. The assets of the Fund shall comprise of bank fees and other investments.

63.2. The Bank of Mongolia shall lay down the amount and deadlines for the payment of contributions stated in article 63.1 of this law.

63.3. The target amount of Fund's assets shall be equal to 1.3% of total covered deposits of banks, of which 1% of total covered deposits of banks will be raised by cash contributions of banks and 0.3% of total covered deposits of banks with raised by liquid funds of the banks for the purpose of extraordinary payment of funds (guarantee fund).

63.4. The liabilities of the funds shall be paid from the proceeds of the Fund.

63.5. The Bank of Mongolia may change the amount and deadlines for the payment of contributions referred to in article 63.2 provided that in six months after commencement of payments of the contributions by banks, the funds are not sufficient to meet the adequate level of equity and liquidity requirements.

### **Article 64. Extraordinary payment of contributions of banks**

64.1. Where the funds of the Fund are insufficient to cover the bank resolution financing, the Bank of Mongolia shall be authorized to request extraordinary payment of contributions from the banks which shall not exceed the amount of the fund stated in 63.3.

### **Article 65. Cross Border Cooperation**

65.1. The Bank of Mongolia may conclude cooperation agreements or Memorandum of Understanding with relevant third country authorities which are responsible for the resolution of a bank which has a branch, or is part of a conglomerate, that operates in Mongolia, or in the respective third country, in order to establish the scope and manner of deciding and implementing resolution measures in case of a conglomerate resolution..

65.2. The agreement, or Memorandum of Understanding specified in article 65.1 of this law may include:

65.2.1. timely exchange of information regarding early intervention measures and resolution measures;

65.2.2. timely sharing of recovery plans and the analysis of the recovery plans;

65.2.3. coordination of the administration, resolution, and disposition of the assets and liabilities of the branches or subsidiaries in Mongolia of the foreign bank;

65.2.4. development of a joint resolution plan for measures to be taken under this law;

65.3. The Bank of Mongolia shall be authorized to exchange with the data or information stipulated in article 65.2 of this law provided that:

65.3.1. the purpose for which the data or information is to be used has been ascertained;

65.3.2. Bank of Mongolia's prior consent has been obtained for use of the data or information for purpose other than those specified in article 65.3.1;

65.3.3. the requirements for the treatment of confidential data or information exchanged specified in the law are fulfilled;

65.4. The Bank of Mongolia is authorized to apply the resolution measures to entities that are not established in Mongolia but which carry on the business of a bank in Mongolia via one or more branches through the resolution authority of the relevant third country.

65.5. Where the Bank of Mongolia considers that the resolution measures stated in article 65.4 of this law is insufficient for ensuring financial stability of Mongolia, the Bank of Mongolia shall have the power to take measures to increase equity of the branch in Mongolia and other compliance measures specified in this law.”

## **Article 66. Moratoria**

66.1. The Bank of Mongolia may order the following moratoria with respect to the bank under resolution:

66.1.1. waiver, stay, suspension or limitation of prompt compliance by the bank under resolution with previously contracted obligations; and

66.1.2. full or partial suspension of the execution by the bank under resolution's creditors over the assets of the bank under resolution.

66.2. The Bank of Mongolia may order the following measures:

66.2.1. temporary waiver of compliance by a bank under resolution with its provisions on prudential supervision;

66.2.2. temporary closing of counters and other facilities of the bank under resolution where transactions are carried out with the public;

66.2.3. temporary stay for [tbd] for exercising any early termination rights by the counterparts of a bank under resolution as stipulated in financial contracts entered into by them.

66.3. The measures referred to in Section 66.2 shall have a maximum duration of ninety (90) days, which may be extended twice for equal periods.

66.4. The commencement of any resolution decision or resolution measure shall not in and of itself give rise to any right of any other person to terminate any contract with the bank under resolution, and no right or obligation of a lender to make additional loans to a bank under resolution may be terminated, suspended, or modified solely because of the commencement of the resolution decision.

66.5. The measures implemented and provided in this Article shall be immediately made public by the Bank of Mongolia.

66.6. No person shall, without the consent of the Bank of Mongolia take any action to sell, transfer, assign or dispose of any property of a bank under resolution.

66.7. Where the Bank of Mongolia has reasonable facts to believe that the conditions of the assets of the shareholders and creditors of the bank under resolution are to worsen as a result of liquidation, such persons shall have a right to claim recovery of the conditions of their assets.”

#### **Article 67. Termination of the resolution decision**

67.1. The resolution decision shall be terminated when the Bank of Mongolia determines that:

67.1.1. There are no more grounds to implement resolution measures; or

67.1.2. the resolution measures are no longer necessary.

67.2. When the resolution measures end except for when the bank under resolution is sufficiently recapitalized in accordance with the Bank of Mongolia regulations, the Bank of Mongolia shall revoke the license of the bank.

67.3. When resolution measures terminate the Bank of Mongolia shall revoke the license of the bank, unless the If the bank under resolution is sufficiently recapitalized as a result of resolution measures under article 67.1 of this law, the Bank of Mongolia shall issue a decision to shift full power of the management to the bank’s shareholders and the Bank of Mongolia shall carry out the duties of the relevant bank’s Directors until the election of new Directors.

67.4. A report prepared by the administrator reflecting resolution instruments, and records of incurred expenses shall be attached to the decision issued under the previous subparagraph 67.2.

## **Subchapter Five Bank liquidation**

### **Article 68. Appointment of the liquidator**

68.1. The Bank of Mongolia is authorized to issue a decision to liquidate a bank and appoint a liquidator for a bank when:

68.1.1. the Bank of Mongolia has revoked the license of the bank as part of compliance measures;

68.1.2. the resolution measures provided for in this law are not possible in the reasoned opinion of the Bank of Mongolia.

68.2. no body other than the Bank of Mongolia shall have the right to commence compulsory bank liquidation or bankruptcy proceedings.

68.3. The liquidator shall take the full powers of the bank and its management of the relevant bank and administer the liquidation of assets of the bank, the recovery on any claims of the bank, and the distribution of the proceeds to its creditors.

68.4. The Bank of Mongolia shall appoint an official of the Bank of Mongolia or any other person meets qualifications as prescribed in article 56.2 of this law.

68.5. Compensation of the liquidator shall be set by the Bank of Mongolia and expenses incurred due to liquidation of the bank shall be covered by the respective bank.

68.6. The liquidator shall immediately post in each office and branch of the bank a notice announcing the liquidation of the bank, specifying the effective date of possession by the liquidator. That notice will state, among other things identified by the liquidator, that no additional deposits will be accepted by the bank.

### **Article 69. Powers of the bank liquidator**

69.1. Rights and powers of the liquidator shall include:

69.1.1. disposing assets of the bank;

69.1.2. managing, and representing the bank;

69.1.3. limiting, transferring or ceasing the payment of debts;

69.1.4. borrowing money, if the bank assets are not sufficient to finance operating expenses;

69.1.5. canceling employment agreements and other agreements established by the bank;

69.1.6. hiring or dismissing employees as necessary;

69.1.7 concluding contracts on behalf of the bank;

69.1.8. making payments on behalf of the bank within a limit of payment set by the Bank of Mongolia;

69.1.9 continue or suspend some operations within the framework of bank liquidation measures;

69.1.10. resetting deposit rate not less than the current minimum deposit rate;

69.1.11. cancelling bank investment agreements and revise interest rate, service fee and term.

69.1.12. netting off payables and loan interest receivables on the depositors and customers of the bank;

69.1.13. have an independent, external and professional body to carry out a bank asset and liability appraisal in accordance with relevant standards and requirements;

69.1.14. imposing liability to shareholders and covering the loss to the amount of their contributions to the bank capital in accordance of provision 35.8 of this law.

69.2. The liquidator shall provide any information with respect to the liquidation upon the request of the Bank of Mongolia and shall report regularly to the Bank of Mongolia within the deadlines specified by the latter.

69.3. The liquidator shall be obliged to take all necessary measures to ensure safety and soundness of the assets of the bank.

69.4. Within sixty [60] days after his appointment, the liquidator shall prepare and submit to the Bank of Mongolia a financial statement, other statements, records and list of assets of the bank.

69.5. If the liquidator has reasonable cause to believe that the shareholders, directors, senior managers, and other employees have engaged or are engaging in fraudulent activities with respect to the bank, the liquidator shall immediately notify the Bank of Mongolia; and when appropriate, refer the matter to the public prosecutor.

69.6. If the liquidator has reasonable cause to believe that some payments or transfers made by the bank within a period of three (3) months were based on preferential treatment of certain persons interests; and all payments and transfers, within a period of twelve (12) months

prior to the liquidator's appointment, to shareholders, the chairman or members of the Board of Directors, Executive Management, employee or related persons of those, the liquidator shall petition to declare such payments or transactions void, except in following cases:

69.6.1. The payment made to a depositor did not exceed the limit of payment to a depositor set by the Bank of Mongolia;

69.6.2. property transferred to others was paid market price at the time of the transfer;

69.6.3. Compensation paid to the chairman or members of the Board of Directors, Executive Management, or employee did not exceed the normal level of previously paid compensation /bonuses and other additions do not apply here /;

69.6.4. transfer of property to special purpose company for the purposes to issue asset-backed securities in cases other than with nature of fraud.

#### **Article 70. Condition for implementing bank liquidation measures**

70.1. If a receivership was appointed to the bank, the liquidation measures will be implemented in accordance with the following conditions:

70.1.1. after the decision to liquidate the bank, the calculation of interest, penalties and fines on un-fulfilled obligations of the bank shall be discontinued and shall not accrued;

70.1.2. court proceedings of a civil case pertaining to the bank shall be suspended as per clause 80.1.1 of the Law on Court Proceedings of Civil Cases;

70.1.3. All parties except for the bank receiver shall not have the right to satisfy any claims from the bank assets under non-dispute procedure;

70.1.4. during the bank receivership, it shall be prohibited to make payments, on a non-dispute basis, from proceeds of sales of the bank's collateral and assets seized as per a court decision made earlier;

70.2. The bank receiver shall have the right to reject the bank's un-fulfilled obligations that may cause a complication to the bank receivership, gives preference to vested interests of some parties, and have negative implications for management of the bank activities and for the protection of interests of the bank clients, depositors and creditors.

#### **Article 71. Filing and notice of claims**

71.1. Within 2 months after its appointment, the liquidator shall determine the time to accept a claim of creditors within sixty days [60] from the date of notice or publication and deliver a notice to all creditors on the bank book and publishing a notice.



71.2. Not later than ninety [90] days after the due date for filing claims under paragraph 71.1, the liquidator shall:

71.2.1. reject any claim of which the liquidator doubts the validity;

71.2.2. determine the amount owing to each creditor, and the priority of his claim under this law;

71.2.3. approve a plan of liquidation actions contains the remuneration payable to the liquidator, the names of the creditors, together with details of the validated amount of each claim and the payment to be received thereunder.

71.2.4. notify each creditor of its claim and validated amount.

71.3. The bank liquidator shall have a right to reject claims of creditors who failed to file their claim in timeframe specified in article 71.1 of this law.

## **Article 72. Transactions subject to avoidance**

72.1. Within one year after its appointment, the liquidator may propose to the authorized body to declare void the following transactions:

72.1.1. transactions detrimental to bank, made within one year prior to the date of the appointment of the liquidator;

72.1.2. a sum of transaction that the bank entered into within six months prior to the date of the appointment of the liquidator, increases the amount that the creditor would receive in the liquidation procedures; and

72.1.3. transactions with related parties of the bank, if such transactions affected the bank become insolvent and were made within one years prior to the date of the appointment of the liquidator.

## **Article 73. Hierarchy of claims**

73.1. The following order shall be applied in meeting claims from proceeds of sales, disposal and repayment of bank assets:

73.1.1. payment that was made by the bank based on a court ruling to eliminate damages caused to the life and health of others;

73.1.2. wages and salaries of bank employees except for authorized officials; the wages and salaries shall not exceed the amount equal to five times the minimum wage;

73.1.3. operational expenses of the Receiver's operation;

73.1.4. payment for individual deposits except for insured deposits set forth in the Law on Deposit Insurance;

73.1.5. payment for individual current accounts except for insured deposits set forth the Law on Deposit Insurance;

73.1.6. payment for legal entity deposits except for insured deposits set forth in the Law on Deposit Insurance;

73.1.7. payment for legal entity current accounts except for insured deposits set forth in the Law on Deposit Insurance;

73.1.8. claims of the DICOM that took over the right to claim of insured depositors in accordance with the Law on Deposit Insurance;

73.1.9. payment for deposits not covered by the insurance set forth in clauses 7.2.1-7.2.3 of the Law on Deposit Insurance;

73.1.10. liabilities and taxes due to the government;

73.1.11. claims of the Deposit insurance fund;

73.1.12. claims of the BOM's payment;

73.1.13. payment for deposits not covered by the insurance set forth in clauses 7.2.4-7.2.6 of the Law on Deposit Insurance;

73.1.14. loans and equivalent liabilities as set by the relevant loan and debt instrument contract to have a higher hierarchy than other claims and subordinated debt of the bank;

73.1.15. other liabilities;

73.1.16. subordinated debt.

73.2. In meeting claims, the Receiver can conclude an agreement to fully and partially transfer bank debt with allotted assets to others in accordance with order set forth in 73.1 of this law.

73.3. If proceeds from sales of bank assets is not sufficient to meet claims in full, such claims shall be paid in a manner to pay in full the first claim in the list before the next.

73.4. If the available amount is not sufficient to pay all claims in one hierarchy claim in full, the amount may be paid on a pro rata basis.

73.5. Any proceeds remaining after the payment of all claims under Article 73.1 shall be distributed among shareholders of the bank in accordance with their rights.

#### **Article 74. Terminating and final reporting on liquidation**

74.1. When all assets of a bank have been sold, distributed or transferred, the liquidator shall submit to the Bank of Mongolia a report of the liquidation.

74.2. If the Bank of Mongolia discusses and approves the report and completed the liquidation process, a notice of the completion of the liquidation shall be sent to the court, published, and the Bank of Mongolia shall file a request to the Registrar authority who shall strike the name of the bank from the Companies Register.

74.3. Upon publication of the notice referred to in 74.2, the liquidator shall be relieved of any further obligation in connection with her or his activities with respect to the liquidation of the bank.

#### **Article 75. Legal protection**

75.1. Any person subject to a decision of the Bank of Mongolia and other authorized bodies to take compulsory measures shall have the right to lodge a claim to the court.

75.2. The lodging of a legal claim shall not suspend the implementation of the relevant decision and measures of the Bank of Mongolia.

75.3. A court shall settle the appeal lodged under the article 75.1 of this law according to article 112.1 of the Law on Administrative Court Procedure.

75.4. If the court concludes that the decisions of the Bank of Mongolia, an authorized representative, external administrator and Liquidator who took compulsory measures against the bank under resolution are un-lawful, and therefore violate the legitimate rights and interests of the appealing party, compensation for the real damages shall be awarded in monetary form under relevant law.

CHAIRMAN OF THE STATE  
GREAT HURAL OF MONGOLIA

D.DEMBEREL