

# LAW OF UKRAINE

## On Households Deposit Guarantee System

As amended and supplemented by the Law of Ukraine of  
October 2, 2012, ref. number: 5411-VI  
May 16, 2013, ref. number: 245-VII  
April 10, 2014, ref. number: 1197-VII  
July 4, 2014, ref. number: 1586-VII  
December 28, 2014, ref. number 78-VIII  
March 2, 2014, ref. number 218-VIII  
July 16, 2015, ref. number 629-VIII  
(amendments as per paragraph 2 of the Section II of the Law of Ukraine  
of July 16, 2015, ref. number 629-VIII come into effect starting  
from January 1, 2015)

(On July1, 2016 the Law will be amended in accordance  
with the paragraph 3 of Section II of Law of Ukraine of July16, 2015,  
ref. number 629-VIII)

# Section I

## GENERAL PROVISIONS

### Article 1. Scope and Purpose of the Law

1. This Law establishes the legal, financial, and organizational grounds for the operation of the deposit guarantee system, mandate of the Deposit Guarantee Fund (hereinafter — “DGF”), and procedures for deposit payout; regulates the relations between the DGF, banks, and the National Bank of Ukraine; and sets out the powers and functions of the DGF associated with the resolution of insolvent banks and bank liquidation.

2. The purpose of this Law is to protect the rights and legitimate interests of bank depositors, strengthen the public trust in the Ukrainian banking system, stimulate investments in the Ukrainian banking system, and ensure an efficient procedure of insolvent bank resolution and liquidation of banks.

3. The establishment and operation of the household deposits guarantee system, as well as resolution of insolvent banks and liquidation of banks shall be governed by this Law, other laws of Ukraine, regulations of DGF and the National Bank of Ukraine.

### Article 2. Definitions

1. In this Law the below mentioned terms shall have the following meaning:

1) “Agent bank” means a bank used by the DGF to pay out a guaranteed amount of deposits subject to this Law;

2) “Insolvent bank resolution” means measures taken by the DGF with regard to a bank classified as insolvent to resolve this bank using one of the methods specified in Article 39 hereof;

2<sup>1</sup>) “Open tender (contest/auction/bidding)” shall be understood as a method of selling property (assets) and/or shares of a bank, under which a participant meeting the tender conditions and offering the highest bid for the property (assets) or shares) of a bank, and assuming the performance of contest duties becomes the successful bidder (buyer) or, in case of objects of civil rights restricted in circulation, may also own the said property or on the basis of another proprietary right, and is in possession of the relevant licenses and permits;”

3) “Deposit” means cash or non-cash money in Ukrainian or foreign currency received by a bank from a depositor (or received to an account of a depositor) under a deposit agreement or account agreement or under an issued registered certificate of deposit, including interests accrued thereon;

4) “Depositor” means an individual (including individuals-private entrepreneurs/sole traders) who entered into or for the benefit of whom there has been executed a bank deposit agreement, a bank account agreement or who is a holder of a registered certificate of deposit;

5) “Investor” means an entity that stated its intent and submitted a written commitment to the DGF to purchase shares of an insolvent bank or a bridge bank in the course of an insolvent bank resolution;

5<sup>1</sup>) “Asset consolidation” shall be understood as measures aimed to gather, group, analyze, record, prepare, and sell assets of different banks to be resolved or liquidated on other grounds specified by this Law;

5<sup>2</sup>) “Consolidated sale” shall be understood as the disposal of the property (assets) of different banks being resolved or liquidated on other grounds specified by this Law carried out by means of the DGF’s centralizing (merging) specific sales procedures;

5<sup>3</sup>) Funds placed to a deposit by a person receiving interest from the bank on the deposit on an individual basis under contracts concluded on conditions not matching the current market conditions shall be understood as “funds lodged by a depositor to a deposit”:

that do not match the terms and conditions of the public contract;

under a contract concluded on conditions, which are not current market conditions within the meaning of Article 52 of the Law of Ukraine “On Banks and Banking”, by decision of specific officers of the bank and/or managing bodies of the bank not vested with the power to grant such conditions;

5<sup>4</sup>) “Creditor” shall be understood as a legal entity or an individual holding documented claims to the bank’s property liabilities;

5<sup>5</sup>) “Bid increment” shall be understood as the increment (decrement) amount, by which the initial (starting) sales price and each subsequent price of the lot offered for sale is increased/reduced in the process of the open tender;

6) “Liquidation of a bank” means the procedure of bank termination as a legal entity in accordance with the legislation;

6<sup>1</sup>) “Lot” shall be understood as a unit of assets of a bank (several banks) offered for sale at an auction;

6<sup>2</sup>) “Insufficiency of the bank’s property” shall be understood as the excess of a bank’s liabilities in accordance with the register of accepted claims of creditors over the appraised value of the bank’s liquidation pool less the bank’s property pledged and used solely for satisfying claims of the pledgee as a matter of priority;

7. item 7 deleted;

7<sup>1</sup>) “Independent appraisal” shall be understood as appraisal of the value of a bank’s property or shares carried out by a certified appraiser;

8<sup>1</sup>) “Association of investors” shall be understood as several legal entities and/or individuals that stated its shared intention, submitted a joint tender bid and provided the DGF with a joint written undertaking to buy shares in the very same insolvent bank or bridge bank in the course of the resolution of the insolvent bank;

8<sup>2</sup>) “Pre-sale preparation” shall be understood as measures taken by the DGF in respect of a bank or the property of a bank (several banks) for preparing the

bank or the property of the bank (several banks) for sale to enhance their investment appeal and value;

8) "Insolvent bank" means a bank which the National Bank of Ukraine decided to classify as insolvent under the procedure prescribed by the Law of Ukraine "On Banks and Banking";

9) "Bridge bank" means a bank established in the course of the resolution of an insolvent bank(s), whose sole shareholder is the DGF until the date of sale of the bank in question to the investor (association of investors);

10) "Resolution plan" means a decision of the DGF that specifies the manner, economic substantiation, time frames, and terms for an insolvent bank resolution;

11) "Assuming bank" means a bank that is not classified as problem or insolvent, which accepts all, or a part of assets and liabilities from an insolvent bank in the course of an insolvent bank resolution or all liabilities guaranteed by the DGF with the payment of a premium to the DGF;

12) "Problem bank" means a bank which the National Bank of Ukraine decided to classify as a problem bank under the procedure prescribed by the Law of Ukraine "On Banks and Banking" and regulations of the National Bank of Ukraine;

13) "Bank sale" means the sale of all shares in a bridge bank or an insolvent bank;

14) "Register of the DGF participants" means a register maintained by the DGF and containing details of a bank's participation in the mandatory household deposits guarantee system;

15) "Household deposits guarantee system" means a complex of relations among DGF, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, banks and depositors, regulated by this Law;

15<sup>1</sup>) "Specialized Agency" is a legal entity established by DGF with the purpose of to transfer assets and liabilities of an insolvent bank under the terms and conditions as set in this Law;

16) "Provisional administration" means a bank resolution procedure undertaken by the DGF with regard to an insolvent bank under the procedure prescribed by this Law;

17) "Authorized DGF officer" means an employee of the DGF who resolves a bank in the course of the provisional administration introduced in an insolvent bank and/or liquidation on behalf of the DGF and within the scope of powers granted by this Law and/or delegated by the DGF.

## Section II

# LEGAL STATUS OF DGF AND ITS GOVERNING BODIES

### Article 3. Legal Status of the DGF

1. The DGF shall be an institution with special functions in the areas of household deposits guarantee and insolvent banks resolution and the liquidation of banks in cases specified by this Law.

2. DGF shall be a legal entity governed by the public law with its own assets that belong to the state and are held by DGF on the economic management basis. DGF shall be the manager of its property; it shall independently own, use and administer the property held thereby and take any action (including disposal, granting on lease, liquidation) in respect of the said property that does not contravene the legislation and the objective of its operation.

3. The DGF shall be an economically independent institution with its own balance sheet, current and other accounts opened with the National Bank of Ukraine and securities accounts with depository institutions being state-owned banks.

The DGF is not-for-profit organization.

4. The DGF shall have a seal with the national coat of arms and its name; keep accounting records and generate reports as provided by the law.

5. In its activity, the DGF shall be governed by the Constitution of Ukraine and the laws of Ukraine.

6. The DGF shall be located in Kyiv.

7. Government agencies and the National Bank of Ukraine shall have no right to interfere with the DGF's activities intended to exercise its functions and powers assigned to it by the law. Co-operation of the DGF with the National Bank of Ukraine and other state authorities shall be exercised within the scope specified by this Law and other acts of legislation.

8. The DGF's governing bodies shall be the Administrative Board and the Executive Directorate.

9. The DGF shall be restructured and liquidated as provided by a special law.

### Article 4. Functions of the DGF

1. The major objective of the DGF shall be to ensure the functioning of the household deposits guarantee system and insolvent banks resolution.

2. To exercise its main objective, the DGF shall exercise the following functions as prescribed by this Law:

1) maintain a register of the DGF participants;

2) accumulate funds from the sources determined by Art. 19 of this Law, and control the completeness and the timeliness of each DGF participant's contributions payment;

3) invest the DGF funds in the government securities of Ukraine;

3<sup>1</sup>) place bonds in accordance with the procedure in line with the funds-raising areas defined by this Law, and issue promissory notes in cases provided for by the law on the State Budget of Ukraine for the year in question;

4) organize deposits payout in case if a decision regarding the withdrawal of the banking license or liquidation of a bank is made;

5) regulate the participation of banks in the household deposits guarantee system;

6) take part in inspections of problem banks upon a proposal of the National Bank of Ukraine;

7) apply financial sanctions and impose administrative fines to banks and their managers;

8) resolve insolvent banks i.a. through the provisional administration and liquidation of banks, transfer of all, or a part of assets and liabilities of an insolvent bank, sell an insolvent bank, or establish and sell a bridge bank;

9) inspect banks in accordance with this Law;

10) provide financial support to an assuming bank;

11) analyze the financial state of banks in order to elicit any risks associated with their performance and project potential expenses of DGF;

12) provide a special-purpose loan for the advancement of disbursements to depositors of a bank in accordance with item 1 of part six of Article 36 of this Law, and financing expenses associated with the activities of the persons specified in item 2, part six of Article 36; items 7 and item 8 of part two of Article 37; and part four of Article 47 of this Law during the provisional administration period;

12<sup>1</sup>) submit appropriate requests to customers, depositors, and other creditors of the bank in accordance with the procedure prescribed by the DGF;

13) conduct activities to inform the public about the deposit guarantee system and protection of the rights and interests of depositors; and raise the financial literacy of the population;

14) study and analyze development trends of the market of funds mobilized from the depositors by DGF member banks.

3. The DGF shall exercise other functions within the scope of its powers under this Law and other regulations.

## Article 5. Accountability of the DGF

1. The DGF shall be accountable to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine.

Accountability of the DGF shall mean the following:

1) The Cabinet of Ministers of Ukraine delegates and recalls its representative in the Administrative Board of the DGF;

2) The National Bank of Ukraine delegates and recalls its representatives in the Administrative Board of the DGF;

3) the delegation and revocation of a representative to and from the administrative board of the DGF by the Verkhovna Rada of Ukraine.

The DGF shall submit its annual report together with an auditor's opinion to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine by 1 July of the year following a reporting year.

## Article 6. Regulations of the DGF

1. The DGF shall regulate the household deposits guarantee system and insolvent banks resolution within the scope of its functions and powers.

2. The DGF shall enact regulations on the issues pertaining to its powers, binding upon all banks, legal entities and individuals.

3. The DGF shall issue such regulations as instructions, policies, and rules.

4. The DGF regulations shall be subject to state registration as provided by the law.

## Article 7. DGF Reports

1. The DGF shall compile an annual report comprising the DGF activity report for the reporting year and the financial statements.

2. The accuracy of the DGF's financial statements shall be confirmed by an independent auditor selected by the Administrative Board of DGF.

3. The DGF shall publish its financial statements in the *Uriadovy Courier* (Government Journal) or *Holos Ukrayiny* ('Voice of Ukraine') newspapers not later than 1 July of the year following the reporting year.

4. The DGF shall publish its annual report on its official Internet web-site by 1 July of the year following the reporting year.

## Article 8. DGF Administrative Board Composition and Formation Procedure

1. The Administrative Board of DGF shall consist of 5 persons: one representative of the Cabinet of Ministers of Ukraine, two representatives of the National Bank of Ukraine, one representative of the relevant committee of the Parliament of Ukraine and the DGF Managing Director (ex officio).

2. The Administrative Board of DGF shall be chaired by the Chairman elected annually by the Administrative Board from among its members. The DGF Managing Director shall not be eligible to be elected as a Chairman of the Administrative Board of DGF.

3. To be eligible to become a member of the Administrative Board of DGF a person shall be a Ukrainian citizen permanently residing in Ukraine with complete higher education in economics, finances or law, and at least five years of relevant work experience, perfect business reputation, and with no outstanding

convictions for commitment of acquisitive offences. A member of the Administrative Board of DGF shall not be a manager, member or affiliated person of any bank.

4. A term of powers of a member of DGF Administrative Board, except for the Managing Director of DGF, shall be four years and may be extended, but only for one consecutive term.

5. In case if the term of powers of the DGF Administrative Board member expires, the relevant delegating authority or organization which delegated that member shall delegate, within a month, a new representative to serve on DGF's Administrative Board or shall decide to extend the term of the DGF Administrative Board member.

6. The powers of the DGF Administrative Board member can be terminated early under a request from the delegating authority or organization. The powers of the DGF Administrative Board member shall also be terminated in such cases:

- 1) request for voluntary termination of powers is filed;
- 2) it is impossible to discharge responsibilities assigned, including for health reasons;
- 3) the employment with the delegating authority has been terminated;
- 4) judgment of conviction with regard to such person is enforced;
- 5) death, or a court decision is passed declaring such person incapable or impaired, missing or deceased;
- 6) loss of citizenship of Ukraine;
- 7) absence at three or more consecutive meetings of the Administrative Board of the DGF.

7. The authority/organization that delegated the DGF Administrative Board member whose powers have been terminated early pursuant to part 6 of this Article shall be required, within one month after such early termination, to delegate a new representative to serve on the DGF Administrative Board.

8. The powers of the Managing Director of DGF as a member of the DGF Administrative Board shall be terminated upon his/her dismissal from the office of the DGF Managing Director.

9. Members of the DGF Administrative Board shall perform their functions free of charge. Members of the DGF Administrative Board shall be compensated for the expenses incurred in the course of exercising their powers under this Law and the operating procedures of the DGF Administrative Board.

10. Organization of activities of the DGF Administrative Board and the paper work procedures shall be set forth in the operating procedures to be approved at a Board meeting.

11. Premises and necessary supplies for the DGF Administrative Board shall be provided by the DGF from its budget.

## **Article 9. Powers of the DGF Administrative Board and the Chairman of the DGF Administrative Board**

1. The DGF Administrative Board shall exercise the following powers:

- 1) approve the operating procedures of the DGF Administrative Board;
- 2) approve the budget of the DGF;
- 3) approve the DGF development strategy and the annual plan of its activity;
- 4) approve the principles of the investment policy of the DGF and the annual investment plan of the DGF;
- 5) appoint and dismiss the DGF Managing Director;
- 6) approve the staff of the DGF Executive Directorate proposed by the DGF Managing Director;
  - 6<sup>1</sup>) approve the decision of the executive directorate on placement of bond or issue of financial promissory note and their target placement;
  - 6<sup>2</sup>) endorse the report of the Executive Directorate of the DGF on the selection of the least-cost method of resolution of a bank categorized as insolvent for the DGF, and the status of implementation of the resolution plan in the previous quarter by the end of the first month following the reporting quarter;
  - 6<sup>3</sup>) endorse the report of the Executive Directorate of the DGF on the status of the disposal of assets (property) of banks, in whose respect a decision to revoke the banking license and liquidate the bank has been made, for the previous quarter by the end of the first month following the reporting quarter;
- 7) approve decisions of the Executive Directorate on the DGF's participation in the international deposit guarantee (insurance) organizations;
- 8) approve the decisions of the Executive Directorate on a special contribution or differentiated risk-based contributions to the DGF;
- 9) approve the decisions of the Executive Directorate on getting loans or non-refundable financial support;
- 10) select an auditor annually to audit the DGF;
- 11) approve the DGF's annual report;
- 12) decide on the need for an extraordinary audit of DGF and select an auditor for this purpose;
- 13) approve the charter of the internal audit function of DGF endorses the appointment and the dismissal of the head of the internal audit function;
- 14) approve requirements for the information disclosure with regard to the activities of the DGF;
- 15) approve the remuneration scheme for the DGF Executive Directorate members;
- 16) approve the list of the DGF positions falling under the requirements of Article 16(2) of this Law;
  - 16<sup>1</sup>) approve the procedure of the selection of members of the Executive Directorate of the DGF and authorized DGF officers;
  - 17) increase the maximum coverage limit;

2. The Chairman of the DGF Administrative Board shall exercise such powers:

- 1) organize meetings of the DGF Administrative Board and chair the meetings;
- 2) sign minutes of the DGF Administrative Board's meetings;
- 3) assign responsibilities to the members of the DGF Administrative Board;
- 4) exercise other powers and functions under the operating procedures of the DGF Administrative Board.

### **Article 10. DGF Administrative Board Operations**

1. The DGF Administrative Board operations shall be governed by its operating procedures.

2. The DGF Administrative Board shall hold regular meetings at least once a quarter.

3. The DGF Administrative Board may hold extraordinary (ad hoc) meetings upon an initiative of the Chairman or at the request of at least three of its members, or at the request of the DGF Executive Directorate.

4. Decisions of the DGF Administrative Board require a simple majority of votes provided that at least four members participate in the meeting. In the event of equal division of votes, the Chairman of the Administrative Board shall have a deciding vote.

5. The DGF Administrative Board can make decisions based on an enquiry of its members under the regulations of the DGF Administrative Board.

6. When the DGF Administrative Board decides on the appointment, dismissal of office of the DGF's Managing Director, such Managing Director shall not take part in voting.

### **Article 11. DGF Executive Directorate**

1. The Executive Directorate shall run the DGF current operations.

2. The DGF Executive Directorate shall consist of seven members. The Managing Director and Deputy Managing Directors of the DGF shall be included in the Executive Directorate ex officio.

3. To be eligible for the membership in the DGF Executive Directorate, a person shall be a Ukrainian citizen permanently residing in Ukraine with complete higher education in economics, finances or law, and at least five years of relevant work experience, impeccable business reputation, and with no outstanding convictions for commitment of acquisitive offences, and a full-time employee of the DGF. The chief executive officer, shareholder or affiliated person of a bank or any legal entity, with which the DGF or the bank resolved by the DGF maintains contractual relations, shall not be eligible to serve on the DGF Executive Directorate.

4. The Managing Director of the DGF appoints and dismisses the deputies subject to approval of the DGF Administrative Board. The number of Deputy Managing Directors of the DGF shall be specified in the staffing table, but shall not exceed four persons.

5. Decisions of the DGF Executive Directorate shall require a simple majority of votes provided that at least four members of the Executive Directorate participate in the meeting. In the case of equal distribution of votes, the Managing Director shall have a deciding vote.

6. The procedure for operations and conducting meetings of the DGF Executive Directorate shall be governed by its operating procedure.

### **Article 12. Powers of the DGF Executive Directorate**

1. To support the operations of the DGF, the DGF Executive Directorate shall have the following powers:

- 1) decide on excluding a bank from the DGF participants;
- 2) prepare a draft budget of the DGF and submit it to the DGF Administrative Board for approval;

- 3) submit an annual report of the DGF to the DGF Administrative Board for approval;

- 4) call extraordinary (ad hoc) meetings of the DGF Administrative Board;
- 5) annually proposes an auditor for consideration to the DGF Administrative Board to audit of the DGF;

- 6) determine the DGF structure and approve the regulations on its structural subdivisions;

- 7) approve the staffing plan of DGF, as well as terms and forms of remuneration to the DGF employees save for the members of the DGF Executive Directorate;

- 8) decide on the DGF's participation in the international deposit guarantee (insurance) organizations subject to further approval by the DGF Administrative Board;

- 9) decide on supplies and staffing needs of the DGF within the budget of the DGF approved by its Administrative Board;

- 10) pass regulations of the DGF;

- 11) approve the operating procedures of the DGF Executive Directorate;

- 12) submit the draft charter of the internal audit function to the Administrative Board for approval and proposals on the appointment/dismissal of the head of the internal audit;

- 13) make decisions on the property within the scope of management of DGF (including the cases of the disposal, granting on lease, liquidation);

- 14) make decision to take out a loan from a non-banking financial institution or foreign creditor subject to approval of such decision by the Administrative Board.

2. With regard to the sources of DGF financing, the DGF Executive Directorate shall have the following powers:

- 1) make decisions to introduce a special contribution or differentiated risk-based contributions to the DGF;

- 1<sup>1</sup>) make a decision to place bonds or issue promissory notes, and submit it to the Administrative Board of the DGF for approval. The said placement or issue

may be carried out solely for the raising of funds by the DGF or in cases specified by this Law;

2) make decisions to request loans from the Cabinet of Ministers of Ukraine, the National Bank of Ukraine and/or non-refundable financial support from the state budget;

3) submit an investment plan of the DGF to the DGF Administrative Board for approval;

4) decide on investing the DGF's funds under the investment plan;

5) decide on charging and collecting the penalty for late payment of the contributions to the DGF by a bank;

6) make decision to postpone payments of regular contributions to DGF in cases, provided by this Law;

3. The DGF Executive Directorate shall have the following powers to ensure payouts of deposits:

1) determine the procedures for maintaining the register of the DGF participants;

2) determine the procedure for deposits payouts by the DGF pursuant to Section V of this Law;

3) determine the procedure for maintaining a database on depositors by bank and an aggregate database by the DGF;

3<sup>1)</sup> appoint employees empowered with monitoring the bank's compliance with the procedure of setting up and maintaining depositor databases, the performance of banking transactions by the bank, including the collection of the information and copies of documents required for drafting a resolution plan, the appraisal of assets of the bank in accordance with the procedure prescribed by the DGF (including the debt to the bank under loans, the existence and the value of the collateral securing the performance of liabilities under loan agreements, the debt under bank-owned securities, the claims of the bank to a client under the bad debt written-off, and the existence and the value of the security for the performance of liabilities related to such a debt, etc.);

4) make decisions on the deposit payout if the National Bank of Ukraine made a decision to revoke a banking license and liquidate a bank;

5) approve the procedure for nomination of agent banks and select agent banks under this procedure;

6) make decision on paying the resolution expenses within the DGF budget as approved by the DGF Administrative Board;

7) set forth requirements for the contents of bank deposit contracts in respect of issues applicable to the operation of the deposit guarantee system;

8) specify additional requirements for the procedure of the disclosure of the information about terms and conditions of the banking deposit services by banks to depositors.

4. The DGF Executive Directorate shall have the following regulatory powers:

1) approve the procedure for bank inspection by the DGF and participation of the DGF's staff in inspections of problem banks carried out by the National Bank of Ukraine;

2) decide on scheduled and non-scheduled inspections of banks by the DGF or on participation of the DGF's staff in inspections of problem banks carried out by the National Bank of Ukraine;

3) approve inspection plans and results thereof;

4) approve the procedure and reporting forms filed by banks to the DGF;

5) decide on furnishing information, other than reports, by a bank under this Law.

5. The DGF Executive Directorate shall exercise the following powers in the course of insolvent banks resolution:

1) define conditions and the procedure of insolvent bank resolution and liquidation of banks;

1<sup>1)</sup> establish collegiate bodies tasked with the consolidation and sales of assets of various banks, and approve their charters;

2) delegate and revoke all, or part of, its powers to/from collegiate bodies and/or the authorized officer (several authorized officers) of the DGF within the scope specified by this Law;

3) determine additional requirements for the authorized DGF officer and rules to control the avoidance of conflict of interests;

4) approve the cost estimate of the DGF for provisional administration and/or liquidation of a bank within the budget of the DGF as approved by the Administrative Board;

5) approve the cost estimate of the bank associated with the provisional administration and/or liquidation of the bank;

6) item 6 deleted;

7) approve the resolution plan and amendments thereto;

8) agree on the terms of transferring of all or part of the assets and liabilities from an insolvent bank to an assuming bank following creditors' claims priority set in Article 52 of the Law, sale of an insolvent bank to an investor or incorporation of a bridge bank and transferring of all or part of the assets and liabilities to this bank in the priority set by Article 52 of the Law;

8<sup>1)</sup> make the decision to establish a Specialized Agency;

9) decide on the provision of the financial support to an assuming bank;

10) approve the resolution plan implementation report of the authorized DGF officer and make the decision to withdraw provisional administration from a bank;

11) propose to the National Bank of Ukraine to revoke a banking license and liquidate a bank;

12) determine procedure for compilation and approve the register of accepted creditors' claims;

13) approve results of inventory of the bank's assets and formation of its liquidation pool;

14) determine the procedure and methods of sale of assets of a bank in liquidation;

15) approve the liquidation balance sheet and the authorized DGF officer's report on completion of the liquidation procedure;

16) in the event of funds insufficiency, make decision to grant a directed loan to a bank to secure payments subject to Article 36(6)(1) of this Law. The amount of payouts made by the Fund shall be deducted from the DGF's liabilities to the depositors in case of a bank liquidation and shall be recovered to the DGF from a bank's assets taking into account the priority under Article 52 of this Law;

17) in the event of the lack of the funds in the bank to cover the operational expenses, activities and engaging consultants and other persons specified in the sub-section 2 of the paragraph six of the Article 36, sub-section 7 and 8 of the second paragraph of the Article 37 and the fourth paragraph of the Article 47 of this Law, the Executive Directorate shall decide to grant a 'special purpose loan' to cover those expenses out of the funds of the DGF.

6. The DGF Executive Directorate shall decide on other issues pertaining to this Law and the objective of the DGF, which do not fall under the competence of the DGF Administrative Board.

### **Article 13. Appointment and Dismissal of the DGF Managing Director**

1. Appointment and dismissal of the Managing Director shall be supported by the majority of the DGF Administrative Board members.

2. To be eligible to become a Managing Director, a person shall be a Ukrainian citizen permanently residing in Ukraine. A chief executive officer, shareholder or affiliated person of a bank shall not be eligible to be appointed as a Managing Director of the DGF.

3. The DGF Managing Director shall be appointed for a term of five years with a possibility of reappointment for not more than one term.

4. The DGF Managing Director may be dismissed early by the DGF Administrative Board in the following cases:

1) request for voluntary termination of powers is filed;

2) it is impossible to discharge responsibilities assigned, including for health reasons, which is proved by a relevant medical opinion;

3) judgment of conviction with regard to such person entered into force;

4) death, or a court decision is made declaring such person incapable, missing or deceased;

5) discovery of the facts evidencing non-conformity of the DGF's Managing Director with the requirements listed in part 2 of this Article.

### **Article 14. Powers of the DGF Managing Director**

1. The DGF Managing Director shall:

1) ensure daily operations of the DGF;

2) act on behalf of the DGF and represent its interests without a power of attorney in its relations with the government agencies, the National Bank of Ukraine, banks, international organizations, other legal entities and individuals;

3) preside at the meetings of the DGF Executive Directorate and manage its activities;

4) sign minutes of the meetings, decisions of the DGF Executive Directorate, and agreements of which the DGF is a party;

5) assign responsibilities to the DGF Deputy Managing Directors;

6) issue directives (orders, resolutions, instructions) binding for all the staff of the DGF;

7) appoint and dismiss staff members of the DGF under the labor legislation of Ukraine;

2. The DGF Managing Director shall have a right to delegate some of its responsibilities to other employees of the DGF under the regulations of the DGF.

3. The DGF Managing Director shall bear personal responsibility for the operations of the DGF and implementation of its tasks.

### **Article 15. Internal Audit**

1. The Internal Audit function shall be set up within the DGF and operate based on the charter proposed by the DGF Executive Directorate and approved by the DGF Administrative Board. In its activities, the Internal Audit shall report to the DGF Administrative Board. The Head of the Internal Audit shall be appointed and dismissed in concurrence with the DGF Administrative Board.

2. Internal Audit shall perform the following functions:

1) periodically review the DGF operations for their compliance with the requirements of the legislation, regulations and by-laws of the DGF, as well as decisions of its management bodies;

2) inspect the results of the DGF financial and investment activities;

3) perform other functions in line with the regulation of the Internal Audit.

3. The Internal Audit function shall regularly (by the first day of each quarter) submit reports to the DGF Administrative Board with the opinions and proposals on issues of its competence. Reports of the Internal Audit function shall be approved by the DGF Administrative Board. Opinions and proposals of the Internal Audit must be taken into consideration in the course of activities of the DGF.

### **Article 16. DGF Staff Members**

1. For the purposes of this Law, the Fund staff shall consist of employees who hold positions provided in the staffing plan.



2. The DGF staff included in the list of the positions approved by the DGF Administrative Board shall be prohibited from:

- 1) acting in the capacity of a chief executive officer, participant or affiliated person of a bank (except for a bridge bank);
- 2) item 2 deleted;
- 3) working for the banks;
- 4) carrying on business, having side jobs, except for teaching, academic endeavor and other creative activities.

3. The DGF staff shall be protected by law while performing their professional functions:

1) the DGF staff shall not be held liable for any acts or inaction in cases when they acted based on, within the authority and by means as provided by the Constitution of Ukraine and laws of Ukraine. Lawsuits filed against DGF representatives shall be deemed to have been filed against DGF;

2) any insult of the DGF staff, resistance to his/her legitimate actions and/or claims/demands and/or other actions that obstruct his/her professional functions; threat of homicide and/or destruction/damage to his/her property; as well as threat to his/her relatives associated with the performance of his/her duties shall entail the liability as envisaged in the legislation.

The DGF may insure against financial liability, including liability for damage resulted from a professional error by DGF staff.

Life and health of the Executive Directorate members and/or authorized officers are to be insured pursuant to the legislation, regulations of the DGF and insurance contacts.

The damage caused as a result of decisions, actions and/or inaction of DGF (its employees), including the damage caused as a result of a professional error of members of the Executive Directorate of DGF and/or authorized officers shall be restituted in accordance with the legislation and insurance contracts (in case it was insured).

4. DGF staff shall be prohibited from divulging restricted information (including bank secrets), of which they became aware in connection with the exercise of their job (service) duties, also in case of the termination of the employment relations with the DGF, except for cases specified by law.

5. Provisions of items 1 and 2 of part three and part four of this article shall apply to consultants and/or auditors, other persons employed by the Fund and/or the authorized DGF officer in accordance with this Law and regulatory acts of DGF for the performance of functions of DGF.

## **Section III**

### **MEMBERSHIP IN DGF**

#### **Article 17. DGF Members**

1. The DGF members are banks. The membership of banks in DGF shall be mandatory. Specifics of a bridge bank's membership in the DGF shall be set forth in this Law and regulations of the DGF.

2. A bank shall acquire a DGF member's status on the date when such a bank obtains a banking license.

3. A bank shall pay contributions to the DGF as set forth in this Law, and comply with other requirements of this Law and regulations of the DGF.

4. The DGF shall have the right to receive information from a bank free of charge on the bank's operations, all kinds of explanations, all documents necessary for conducting an inspection and performing other functions of the DGF under this Law. A bank must provide to the DGF, at its request or in accordance with legal requirements, documents and other information necessary for performing the functions of the DGF under this Law. Banks shall provide information considered a bank secrecy according to the Law of Ukraine "On Banks and Banking".

5. The DGF shall exclude a bank from its members if a decision to revoke its banking license and liquidate a bank has been taken.

6. The DGF shall maintain a register of the DGF members as prescribed by the regulations of the DGF.

7. The DGF member shall maintain a database of depositors in accordance with the procedure determined by the DGF, ensuring a possibility of the daily provision of the information on the depositors taking into account the information available in the database about the interest on individual deposits (reduced by the tax amount).

#### **Article 18. Information for Depositors**

1. A bank shall undertake to:

1) disclose information on the mandatory deposit guarantee system and the bank's membership in the DGF in all the premises of the bank where the bank provides banking services to depositors;

2) take other measures to inform depositors as prescribed by this Law and regulations of the DGF.

2. If the DGF is referred to in the member's advertisement, such member shall specify the marginal guaranteed amount of the deposit payout, the number and issuance date of the DGF member's certificate.

3. DGF shall inform the public about its activities by means of publishing information on the official web site on the Internet, holding press conferences

and press clubs, making presentations on the radio and the television and otherwise.

The DGF shall measure the public awareness level on periodic basis as set by the Executive Directorate.

4. The DGF shall be obliged to place a list of DGF members as of January 1 on its official web site no later than one month of the appropriate deadline. The DGF shall be obliged to additionally publish information about changes in the list of members of the DGF no later than 14 days of the introduction of the relevant changes into the DGF Members Register, as well as the list of DGF members on its official web site.

5. Within 10 business days of the date prescribed by the legislation for the execution of a document and/or the provision of information, the DGF shall be required to place the following information about an insolvent bank and a bank undergoing liquidation on its official website and the website of the insolvent bank:

1) annual financial statements in accordance with requirements of the legislation;

2) quarterly financial statements in accordance with requirements of the legislation;

3) results of the appraisal of assets of the bank with the breakdown of assets by type and the indication of the independent appraiser, the appraisal method, and the date, as of which the appraisal has been made;

4) the results of the insolvent bank's estate inventory and the formation of its liquidation pool;

5) the decision of the DGF on the approval of the method, the procedure, the composition, and the disposal conditions of the bank's property, endorsed by the executive directorate of the DGF, and all other decisions of the DGF on the insolvent bank;

6) the budget of the DGF's expenses on the provisional administration and/or liquidation of a bank;

7) on contracts concluded between the DGF and the third parties in respect of the maintenance and preservation of assets of the bank, the appraisal and sales of the bank's property, the audit, the security of the property and premises of the bank.

## Section IV DGF FUNDING

### Article 19. DGF Funding Sources

1. Funding sources of the DGF shall include:

1) initial contributions of the DGF members;

2) regular contributions of the DGF members;

3) special contribution to the DGF;

4) income received from investments of the DGF funds in Ukrainian government securities;

4<sup>1</sup>) funds raised by the DGF by means of the placement of bonds and/or the issue of promissory notes of the DGF;

5) interest income on the outstanding balance of the DGF's account with the National Bank of Ukraine;

6) loans taken from the National Bank of Ukraine;

7) forfeit (fine, penalty) enforced under this Law;

8) funds contributed by the National Bank of Ukraine at the amount of UAH 20,000,000 at the time of the DGF establishment;

9) funds from the state budget of Ukraine including domestic treasury bonds;

10) revenues obtained from granting a special-purpose loan to a bank for the fulfillment of liabilities of the bank under item 1 of part six of Article 36 hereof;

10<sup>1</sup>) revenues obtained from granting a special-purpose loan to a bank for covering payment related to activities provided by item 2 of part six of Article 36, by items 7 and 8 of part two of Article 37, and by part four of Article 47 hereof;

11) charitable contributions, grants, technical assistance in pecuniary or non-pecuniary form, including those provided by foreign entities;

11<sup>1</sup>) credits from non-banking financial institutions and foreign creditors;

12) funds obtained from implementation of measures envisaged by the resolution plan, in particular, from sale of an insolvent bank or a bridge bank, or from liquidation of a bank;

13) funds obtained from providing subordinated debt to the assuming bank;

14) guarantee down payment transferred by a participant in an open tender in cases specified by this Law.

15) funds obtained from managing assets of the DGF (including the disposal, the lease, etc.).

2. The DGF may be funded from other sources which are not prohibited by the laws of Ukraine.

3. The minimum volume of the DGF's funds excluding the governmental securities to be used to secure liabilities under a loan, at any time shall not be less than 2.5 per cent of household deposits guaranteed by the DGF within the limits of the marginal amount of payout including the contributions to be received in

the in the current quarter from the DGF members. In the event of reaching the minimum level or risk of significant reduction of the DGF funds, the DGF is entitled to take measures to replenish the DGF funds from the sources set forth in part 1 of this Article.

### **Article 20. Managing the DGF's Funds**

1. The DGF shall be a sole administrator of funds accumulated in the course of its activities.

2. Funds of the DGF shall not be included into the state budget of Ukraine, may not be seized and can only be used by the DGF for the following purposes:

1) paying out the guaranteed amount of deposits in accordance with this Law;

2) covering expenses related to the performance of functions and responsibilities of the DGF within the budget approved by the Administrative Board of the DGF including the expenses related to an insolvent bank resolution and expenses mentioned in Section 8 of the Article 39 of this Law;

2<sup>1</sup>) the repayment of bonds and the payment of income on them (the payment under promissory notes) taking into account expenses associated with their placement (issue);

2<sup>2</sup>) the cover of expenses associated with loans taken by the DGF;

3) covering daily operations of the DGF, make regular payments to the staff, buy office supplies and other necessary provisions within the budget approved by the Administrative Board of DGF;

4) providing financial support to an assuming or bridge bank;

5) Item 5 deleted;

6) granting a targeted loan to a bank for making payouts to depositors subject to subsection 1 of the section 6 of Article 36 of this Law during the provisional administration;

7) providing a special-purpose loan to the bank to finance the expenses associated with the operations of the bank specified in item 2 of part six of Article 36, items 7 and 8 of part two of Article 37, and part four of Article 47 of this Law;

8) forming of the authorized capital of a bridge bank, Specialized Agency;

9) Item 9 deleted;

10) repayment of guarantee down payment transferred by an open tender participant in cases specified by this Law.

3. The DGF shall have a right to invest in Ukrainian government securities.

4. The DGF shall make investments pursuant to the investment plan approved by the Administrative Board of the DGF based on the need to perform the DGF functions.

5. The property (including funds) of the DGF may not be garnished, nor any methods to secure a claim shall be applied thereto.

### **Article 21. Initial Contribution to the DGF**

1. A member bank shall pay to the DGF an initial contribution at the amount of 1 percent of its authorized capital within thirty calendar days from the day of issuance of its banking license, unless otherwise provided for by this Law.

2. A member bank established through reorganization shall be exempt from the initial contribution if such initial contribution was paid to the DGF by the reorganized banks and shall assume all rights and obligations in connection with its membership in the DGF.

3. A Bridge bank shall be exempt from initial contribution to the DGF.

### **Article 22. Regular Contributions to the DGF**

1. The DGF member must accrue regular contributions to the DGF as of last day of each quarter. The annual rate of contribution shall be equal to 0.5 per cent of the calculation base in local currency and 0.8 per cent – in foreign currencies.

If the National Bank of Ukraine makes a decision to revoke a banking license and liquidate a bank, such bank is obliged to accrue regular contribution to the DGF for the period date following the last reporting period to the day preceding the date of commencement of the liquidation procedure and make payment to DGF within 15 days.

Calculation base is equal to arithmetic average amounts of daily residual on deposit accounts and accrued interests for a reporting period.

The DGF is entitled to issue regulations introducing the calculation method for regular contributions to the DGF in the form of differentiated contributions. The calculation of the differentiated contributions is based on risk-based adjustment of the basic annual contribution rate. The differentiated contribution rate shall be not less than the basic annual contribution rate.

The bank risk evaluation method for calculation of differentiated contributions is set forth in the DGF regulations upon an agreement with the National Bank of Ukraine.

2. A DGF member shall calculate balances in foreign currencies and the national currency of Ukraine at the official exchange rate of UAH to foreign currencies set by the National Bank of Ukraine on the day of such calculation.

3. The DGF member must pay regular contribution to the DGF on a quarterly basis by the 15th day of the month that follows the quarter for which such payment is made.

If the National Bank of Ukraine makes a decision to alter time frames for the submission of reports by the banks, the Executive Directorate of DGF shall have the right to alter the time frame for the payment of the regular contribution to the Fund.

4. A bridge bank established in accordance with item 1 of part sixteen of Article 42 of this Law shall be exempted from paying the regular fee to the DGF.

If the bank established in accordance with item 1 of part sixteen of Article 42 of this Law loses its bridge-bank status, the said bank shall be obliged to pay the regular fee on a generally applicable basis starting from the date of its losing the bridge bank status.

### **Article 23. Special Contribution to the DGF**

1. The DGF shall have the right to make a decision to introduce a special contribution to the DGF, in conditions mentioned in part 3 of Article 19, or in order to repay its outstanding loans.

2. A DGF member must pay special contribution to the DGF within the time-limit and subject to conditions prescribed by the regulations of the DGF.

3. Total amount of the special contribution paid by the DGF members during a year must not exceed the amount of regular DGF member contribution paid by the DGF member for the previous year.

4. Any DGF member declared insolvent as of the date of the introduction of such a special contribution or a bridge bank shall be exempted from the payment of the special contribution to the DGF.

### **Article 24. Penalty for Failure to Pay or Untimely Payment of Contributions to the DGF, Fines for Administrative Violations**

1. For failure to pay or incomplete payment of contributions to the DGF, a bank, other than a bank categorized as insolvent, shall pay a penalty at the amount of the double discount rate of the National Bank of Ukraine on the unpaid amount for each day of delay (including payment day).

2. The DGF shall have the right to apply to:

1) the National Bank of Ukraine demanding direct debiting of contributions that have not been paid to the DGF in due time, as well as penalties accrued if the DGF member has been in default on payment of respective amounts for one month from the day of payment set forth in this Law;

2) the court with a lawsuit to recover from the DGF member overdue amounts of the initial, regular or special contributions, as well as the penalty accrued.

3. DGF shall impose fines on banks management in compliance with the Code of Ukraine on Administrative Violations.

The second paragraph of the third part of Article 24 is deleted.

Reports on violations to be completed by the DGF staff members.

### **Article 25. Crediting the DGF's Operations and Public Investments on a Non-Repayable (Irrevocable) Basis**

1. In case of a temporary liquidity deficit the DGF shall have the right to request the National Bank of Ukraine to provide a loan and/or buy-out governmental securities. The National Bank of Ukraine makes a decision to

provide/not provide DGF with a loan, including through a opened credit line on conditions specified in regulatory acts of the National Bank of Ukraine no later than within five days of receipt of the application from the DGF.

2. The DGF assesses the risks of significant drop in its assets under the methodology approved by the Cabinet of Ministers on monthly basis.

The risk of insufficiency of the financial resources of the DGF shall mean the projected occurrence during a year of at least one of the following events:

1) from the beginning of the year, the financial resources of the DGF that may be employed for the purposes specified in points 1 and 4, part 2 of Article 20 of the Law reduced by over 70 percent;

2) the financial resources of the DGF in the next period (as projected) is lower than 2.5 percent of the total guaranteed amount of deposits, taking into account expected contributions collections in the current quarter.

In case of the risks of insufficiency of DGF's funds and in case of absence in the State Budget for current year the sufficient amount of allocations, the Fund submits the request to the Ministry of Finance for the loan (non-repayable contribution) from the state budget indicating its amount.

The Ministry of Finance within one month from receipt of request from DGF prepares and submits to the Verkhovna Rada (Parliament) the relevant draft law that includes the proposal of DGF.

3. The DGF applies for a loan or non-repayable contribution from state budget in order to maintain minimum level of funds defined in Part 3 of Article 19 of this Law under the condition that it has exhausted all other sources of replenishing its funds, defined in Part 1 of Article 19 of this Law.

Loan or non-repayable contribution can be provided in the form of cash or internal state bonds.

4. Based on the State Budget Law for the relevant year and if the conditions mentioned in paragraph two of this part hold, the Ministry of Finance ensures the disbursement of loan (non-repayable contribution) within 14 working days.

The grounds for the Ministry of Finance of Ukraine to disburse funds to the Fund or transfer/swap for promissory notes domestic government bonds are the following:

1) if the total assets of DGF, that can be used for goals prescribed in points 1 and 4 of the part 2 of Article 20 of this Law, decreased by more than 70 per cent from the beginning of the year;

2) the total assets of DGF constitute 2.5% or less of the total insured deposits and taking into account premium expected in the current quarter.

5. The procedure for provision a loan or grant from state budget to the DGF shall be defined by the Cabinet of Ministers.

## Section V

# DGF GUARANTEES AND DEPOSIT PAYOUTS

### Article 26. Deposit Guarantees

1. The DGF guarantees to pay out deposits to all depositors of a bank. The DGF shall refund the money in the amount of the deposit, including the interest as at the date of the commencement of the bank resolution procedure by the DGF, but the amount in question may not exceed the ceiling limit of the reimbursement for deposits set as of the said date regardless of the number of deposits in one bank. The ceiling limit of the reimbursement for deposits may not be lower than UAH 200,000. The Administrative Board of DGF shall not have the right to make a decision to reduce the ceiling limit of the reimbursement for deposits.

The DGF shall perform its obligations to depositors subject to requirements for the least cost resolution and losses for depositors as set forth by the Law including by transfer of assets and liabilities of a bank to an assuming bank, sale of a bank, establishing a bridge bank during the period of provisional administration or payout to depositors within the time frame prescribed by this Law.

The payout shall be performed with respect to the amount paid to a depositor during the period of a provisional administration in a bank.

The DGF's guarantees shall not apply to the deposits in the cases provided for by the Law.

2. The depositor shall have a right to receive the guaranteed amount of deposit at the expense of the DGF within the marginal guaranteed amount as established by law as of the date when decision to liquidate the bank and revoke the banking license has been taken.

3. The DGF shall guarantee the payout to a depositor of a bank that has subsequently been reorganized, on the same terms and conditions as before such reorganization.

4. The DGF shall not pay out any funds:

1) put into trust management of a bank;

2) of less than UAH 10;

3) certified by a saving (deposit) certificate payable on demand;

4) funds lodged to a bank deposit by a person, which is a related party of the bank or has been such a party within one year prior to the date of the decision of the National Bank of Ukraine to categorize such a bank as insolvent (or, in case of the decision of the National Bank of Ukraine to revoke a banking license and liquidate a bank on the grounds specified in part two of Article 77 of the Law of

Ukraine "On Banks and Banking"—within one year prior to the date of the said decision);

5) funds lodged to a bank deposit by a person, which has provided the bank with professional services as an auditor, an appraiser, in the event that less than one year has passed since the date of the termination of the provision of services till the date of the decision of the National Bank of Ukraine to categorize the bank in question as insolvent (or, in case of the decision of the National Bank of Ukraine to revoke a banking license and liquidate a bank on the grounds specified in part two of Article 77 of the Law of Ukraine "On Banks and Banking"—one year prior to the date of the said decision);

6) held by a substantial shareholder in the bank;

7) in respect of bank deposits, under which depositors receive interest from the bank under contracts concluded on conditions not matching the current market conditions within the meaning of Article 52 of the Law of Ukraine "On Banks and Banking" or enjoy other financial benefits from the bank;

8) under a deposit in a bank, if the said deposit is used by the depositor as the means to secure the performance of another liability to the same bank, in the full amount of the deposit until the date of the performance of liabilities;

9) with subsidiaries of a foreign banks;

10) deposits in banking metals.

11) funds placed on accounts garnished by court decision;

5. Payouts of foreign currency deposits shall be made in the national currency of Ukraine after recalculation of the deposit value at the official exchange rate of UAH to foreign currencies set by the National Bank of Ukraine as of the date of the commencement of the bank resolution procedure and the exercise of the provisional administration by the DGF in accordance with Article 36 hereof.

6. In case of the decision of the National Bank of Ukraine to revoke the banking license and liquidate the bank on the grounds listed in part two of Article 77 of the Law of Ukraine "On Banks and Banking" the DGF shall guarantee the refund of funds held on deposits to each depositor of a bank, including the interest, as at the date of commencement of the bank liquidation procedure but not exceeding the ceiling limit of the reimbursement for deposits set as of the date of the said decision regardless of the number of deposits in one bank.

The funds from a foreign currency deposit shall be refunded in the domestic currency of Ukraine after the conversion of the deposit amount at the official hryvnia versus foreign currency exchange rate set by the National Bank of Ukraine as of the date of commencement of the bank liquidation subject to the grounds referred to in part two of Article 77 of the Law of Ukraine "On Banks and Banking".

7. The DGF shall complete the payout of the guaranteed deposit sums on the day of the document submission for making record in the Unified State Register of Legal Entities of liquidation of a bank as a legal entity.

## Article 27. Procedure of the Identification of Depositors Eligible for the Deposit Payouts

1. An authorized DGF officer shall compile a list of depositors and calculate the amount of deposit payouts at the expense of the DGF in accordance with the requirements of this Law and the DGF's regulations, as of the day receipt of the decision to revoke the banking license and liquidate the bank was made.

The interest accrual on deposits shall be terminated on the last day prior to the commencement date of the bank resolution procedure by the DGF (in case of the decision made by the National Bank of Ukraine to revoke a banking license and liquidate the bank on the grounds specified in part two of Article 77 of the Law of Ukraine "On Banks and Banking" — on the date of the decision to revoke the banking license and liquidate the bank).

2. The authorized officer of the DGF shall draw up a list of depositors eligible for the reimbursement for deposits at the expense of the DGF with the indication of amounts to be reimbursed within one business day (in case of the decision made by the National Bank of Ukraine to revoke a banking license and liquidate the bank on the grounds specified in part two of Article 77 of the Law of Ukraine "On Banks and Banking" — within 15 business days) of the date of receipt of the decision to revoke the banking license and liquidate the bank by the DGF.

3. An authorized DGF officer shall specify in the list of depositors the payout amount for each depositor.

4. The information on a depositor in the list of depositors must ensure his/her identification in accordance with the legislation.

5. Within three business days (in case of the decision made by the National Bank of Ukraine to revoke a banking license and liquidate the bank on the grounds referred to in part two of Article 77 of the Law of Ukraine "On Banks and Banking"—within 20 business days) following the receipt of the decision on withdrawal of a banking license and liquidation of a bank, the DGF's Executive Directorate shall approve the register of depositors for the payout of the guaranteed compensation amount purposes in accordance with the list of depositors submitted by the authorized DGF officer. DGF shall announce the deposit payout in the "Uriadovy Courier" or "Holos Ukrayiny" newspaper and on its official Internet website within 7 days of the date of the decision revoke the banking license and liquidate the bank.

6. The authorized officer of the DGF shall draw up lists of depositors not eligible for the reimbursement by the DGF in accordance with items 4 to 11 of part four of Article 26 hereof with the indication of amounts to be reimbursed within one business day (or, in case of the decision made by the National Bank of Ukraine to revoke a banking license and liquidate the bank on the grounds referred to in part two of Article 77 of the Law of Ukraine "On Banks and Banking", within 15 business days) of the date of receipt of the decision to revoke the banking license and liquidate the bank by the DGF.

## Article 28. Settlements with Depositors

1. The DGF shall start disbursing the refunds to depositors, their authorized representatives or successors in Ukraine's domestic currency from the next business day after the approval of the register of depositors for the payout of the guaranteed refund amount by the executive directorate of the DGF.

2. The Fund shall disburse the guaranteed reimbursement amounts via agent banks that shall make the payouts in cash or cashless form (at discretion of the depositor).

3. The DGF shall publish announcements in Uriadovyi Kuryer or Holos Ukrayiny newspapers and on its official web site about the completion of the disbursement of the guaranteed reimbursement amount by the DGF not later than 30 days prior to the expiry of the period of liquidation of a bank specified by this Law.

## Article 29. Acquisition of the Bank Creditor Right by the DGF

1. The DGF shall be vested with rights of a creditor of the bank:

1) for the total amount to be paid out to depositors of such a bank as at the date of commencement of the bank resolution procedure by the DGF, including in the amount of the special-purpose loan granted to a bank during the provisional administration period and in the amount of the financial support provided by the DGF to the assuming or bridge bank;

2) for the amount of expenses incurred by the DGF and associated with the bank liquidation procedure made within the scope of the expense budget approved by the administrative board of the DGF, including the consolidated sale of assets of banks to be liquidated;

3) for the amount of the regular contribution to the DGF charged, but not paid, as well as the amount of debt related to contribution payments, penalty and/or fines to the DGF accrued up to the day preceding the commencement of the liquidation procedure.

2. In case of the decision made by the National Bank of Ukraine to revoke a banking license and liquidate the bank on the grounds referred to in part two of Article 77 of the Law of Ukraine "On Banks and Banking", the DGF shall be vested with rights of a creditor of the bank:

1) to the total amount to be paid out to depositors of such a bank as at the date of commencement of the bank liquidation;

2) in the amount of expenses incurred by the DGF and associated with the bank liquidation procedure made within the scope of the expense budget approved by the administrative board of the DGF, including the consolidated sale of assets of the bank being liquidated;

3) to the amount of the regular contribution to the DGF charged, but not paid, as well as the amount of debt related to contribution payments, penalty and/or fines to the DGF accrued up to the day preceding the commencement of the liquidation procedure.

## Section VI

# REGULATORY ACTIVITIES OF THE DGF

### Article 30. Regulation of Banks' Activities by DGF

1. The DGF shall regulate banks' activities by:
  - 1) adopting, within its competence, regulations that are binding upon banks;
  - 2) supervision over the performance of liabilities of banks as to their membership in the DGF;
  - 3) resolution of insolvent banks;
  - 4) in other ways as provided by the Law.
2. Regulatory powers of the DGF set forth in this Law shall apply to all banks in Ukraine. Banks must observe regulations of the DGF and comply with the requirements set by the DGF within its competence.

### Article 31. Reporting of Banks to the DGF

1. A bank must submit to DGF balance sheet, auditor's report, other reporting forms specified by DGF, documents and information, required for the performance of functions prescribed by this Law, within time frames, in formats and in accordance with requirements set by the DGF regulations.
2. The DGF shall have the right to request specific information from a bank. The bank must provide such information to the DGF within the terms and in the manner prescribed by respective requirement of the DGF. Banks provide information which is considered bank secrecy in line with the Law of Ukraine "On Banks and Banking".
3. If the National Bank of Ukraine makes a decision to alter time frames for the submission of reports by banks, the DGF shall have the right to alter the time frame for the submission of reports to the DGF by decision of the Executive Directorate.
4. The DGF shall conduct stress testing of its members for the purpose of calculating necessary basic annual rate of the regular contribution and assessing mid-term financial stability of the DGF at least once every three years. Stress test shall be conducted before change in basic annual contribution from the level defined in part 1 of article 22 and/or before introduction of special contribution. The stress-testing methodology shall be specified by the DGF. Results of any stress-testing shall be considered as classified information and may be provided only to the National Bank of Ukraine, as well as to a member-bank, which was stress tested.

### Article 32. Inspections of Banks

1. The DGF shall have the right to inspect a bank's the fulfillment of the obligations arising from the bank's membership in the household deposits guarantee system concerning:
    - 1) adequacy of reports submitted to the DGF;
    - 2) completeness and timeliness of the contributions' and penalties' to the DGF;
    - 3) completeness and authenticity of the depositors register;
    - 4) compliance with the requirements to inform the depositors of the bank's membership in the DGF;
    - 5) compliance with other requirements of this Law and the DGF regulations.
  2. A bank shall be inspected by staff members of the DGF in accordance with the inspection plan approved by the DGF Executive Directorate.
  3. The DGF shall have the right to inspect a bank not more frequently than once a year. In certain cases, the DGF shall have the right to undertake an off-schedule audit (including an inspection) of a bank under the decision of the Executive Directorate of the DGF.
  4. The DGF shall notify the bank of the scheduled audit no later than 10 days prior to commencement of such an inspection.
  5. The bank must provide the DGF inspection group with:
    - 1) free and gratis access to documents and information required for the inspection, including information that constitutes a bank secrecy;
    - 2) clarifications of specific issues of the bank's activity an request of the DGF staff;
    - 3) free access during working hours to premises where deposits are raised from individuals and to a separate premises to accommodate inspectors during such an inspection.
  6. At the request of the DGF, the DGF staff shall be engaged by the National Bank of Ukraine to hold inspections of banks classified by the National Bank of Ukraine as problem banks by means of being included into the inspection group. The DGF Executive Directorate shall approve a separate inspection plan for the DGF staff included to the inspection group of the National Bank of Ukraine.
  7. If a bank is categorized as a problem bank, the DGF shall have the right to undertake an off-schedule inspection of such a bank on issues, other than those referred to in part one of this article; the list of such issues shall be approved by the Executive Directorate for the purposes of collection of the information for drafting the resolution plan in case of the bank is categorized as insolvent, with the aim of, among other, to determine the value of assets of the problem bank.
- The DGF appraise assets of a problem bank under a methodology established by the DGF.
- The DGF shall have the right to access any transactions and databases of the problem bank, including the right to obtain copies of documents and databases,

and also shall receive on a regular basis any information and statements as prescribed by the DGF.

The DGF and DGF employees appointed thereby may make written requests to managers of a bank to remedy violations of the legislation on the household deposit guarantee system, comply with regulatory documents of the DGF, provide written clarifications on issues of the compliance with the legislation on the household deposit guarantee system, regulatory instruments of the DGF, and request information about the performance of any transactions by the bank.

The DGF and the DGF employees appointed thereby may obtain information from clients, depositors, and other creditors of a bank for the purposes of performance of functions and powers vested in the DGF.

8. The DGF shall have the right to perform performance monitoring of the bank activity in accordance with the procedure prescribed by the DGF.

9. The DGF shall appoint an employee (employees) of the DGF tasked with the analysis of the compliance of the problem bank with requirements of the DGF for the compilation and the maintenance of the database of depositors by banks and the monitoring of its asset transactions no later than on the next business day of receipt of the decision of the National Bank of Ukraine to categorize a bank as a problem bank.

10. In case of detecting violations by the problem bank as for compliance with the requirements of the DGF as pertains to banks' compiling and keeping of depositors databases, the bank shall eliminate the detected violations within the term defined by the authorized officer of the DGF but no longer than 20 days (for the banks with over 500,000 accounts in the database—no longer than 30 days) from the date of signing a report on detected violations.

11. The DGF shall analyze the compliance of a DGF member with requirements of the DGF for setting up and maintaining the bank depositor database, and monitor asset transactions of banks categorized as problem banks during the entire period of a bank's being categorized as a problem bank in accordance with the procedure prescribed by the DGF.

12. A bank categorized as a problem bank must provide the specified employees of the DGF with access to the information (documents, files) for carrying out the actions stipulated in this article.

The access to the information (documents, files) shall be granted to the appointed employees of the DGF on the basis of a copy of the appropriate order of the DGF on the appointment of such employees.

13. If the problem bank fails to meet the requirements set forth in this Article, as well as ensuring compliance of the depositors' databases with the requirements of the DGF, the bank managers shall be subject to administrative and/or criminal responsibility.

14. Restrictions in respect of acquisition of the information that constitutes a bank secrecy shall not apply to the DGF staff who carry out inspections within their scope of powers under this Law.

15. The DGF shall be prohibited from circulating inspection materials to the third parties and from disclosing information about activities of a bank that became available to the DGF while exercising the powers by the DGF, except to the extent required by law.

### **Article 33. Administrative and Commercial Sanctions against Banks for Violation of the Household Deposits Guarantee Legislation**

1. If banks violate the legislation on the household deposits guarantee system, the DGF shall apply administrative commercial sanctions in the form of a written warning or a penalty, or an instruction to remedy violations of the legislation on the households deposits guarantee system commensurately to the committed violation.

2. The following sanction values shall be applied in case of the application of an administrative commercial sanction in the form of a penalty:

1) the non-submission, the late submission or the submission of false information by a bank to DGF, if this Law and/or regulatory acts of DGF require that such information be submitted, shall result in the application of a penalty upon the bank at the rate up to 0.1 per cent of the registered authorized capital of the bank;

2) the violation of the procedure of the depositor database maintenance shall result in the application of a penalty upon the bank at the rate up to 0.1 per cent of the registered authorized capital of the bank;

3) the non-compliance or the late compliance by a bank with decisions and/or regulatory acts of DGF or instructions to remedy violations shall result in the application of a penalty upon the bank at the rate up to 0.1 per cent of the registered authorized capital of the bank.

The application of an administrative commercial sanction in the form of a penalty upon a bank shall not relieve the bank from the duty to remedy the violation.

3. The administrative commercial sanction in the form of an instruction to remedy the violation of the legislation on the households deposit guarantee system may be applied in case of violations referred to in part two of this article.

4. Regulatory acts of DGF shall specify the criteria of the materiality of violation of the legislation on household deposits guarantee system for the differentiation of administrative commercial sanctions and amounts thereof referred to in parts two and three of this article.

5. Administrative commercial sanctions referred to in the part one of this Article shall be applied by the DGF Managing Director and his/her deputies in accordance with the procedure prescribed by regulations of the DGF.



A written warning shall be sent or a resolution shall be adopted, or an instruction to make good violations of the legislation on the households deposit guarantee system shall be issued as a result of the review of the violation case.

A fine can be imposed on a bank within 6 months of violation identification, but no later than 3 years after the violation.

If a bank committed 2 or more violations, the fines shall be imposed for each violation separately.

Inspection Report serves as a ground for considering the case on the violation of the household deposits guarantee legislation.

A report on violation of the household deposits guarantee system can be made by the authorized DGF staff members.

A case on violation shall be considered within 15 days after the DGF received an Inspection Report on violation of the household deposits guarantee legislation.

The fine shall be paid within 15 days after a bank received a copy of the DGF resolution on the fine.

A copy of the payment document certified by a bank, which proves payment of the fine in full, shall be sent to the DGF.

In case if the fine was not paid in time, the State Execution Agency shall enforce the fine as prescribed by the Law of Ukraine "On Enforcement Proceedings".

The fines paid shall be included in the DGF funds.

A resolution on the case about the violation of the household deposits guarantee legislation can be appealed to the court as set forth by the law.

## Section VII PROVISIONAL ADMINISTRATION

### Article 34. Introduction of the Provisional Administration

1. The DGF shall commence the resolution of an insolvent bank on the next business day at the latest after the official receipt of the decision of the National Bank of Ukraine on the classification of a bank as insolvent.

2. Not later than on the following business day after the commencement of the provisional administration of the bank, the DGF shall publish information about the introduction of the provisional administration in the bank on its official Internet web-site and, within ten days, in the "Uriadovy Courier" or the "Holos Ukrayiny" newspapers.

3. The DGF Executive Directorate shall appoint an authorized DGF officer (several authorized officers of the DGF), to whom the DGF shall delegate all, or a part of, its temporary administrator powers, from among the DGF staff not later than on the next working day of the official receipt of the decision of the National Bank of Ukraine to classify a bank as insolvent. The authorized DGF officer must meet the requirements of the DGF. The decision to appoint an authorized DGF officer shall be communicated by the DGF to the head office of the bank and each separated unit of the bank immediately.

All or part of DGF powers defined in this law may be delegated to one of several authorized officers of the DGF. If delegating powers to several authorized officers, DGF must specify the scope of powers vested in each person. The powers of managing bodies of a bank can only be delegated to one authorized officer.

4. The provisional administration shall be instituted for a period not exceeding one month. In case of the insolvent bank resolution in a manner referred to in items 3 to 5 of part two of Article 39 hereof, the provisional administration period may be extended by up to one month. In case of the insolvent bank resolution in a manner referred to in items 1 and 2 of part two of Article 39 hereof, the provisional administration period may be extended by five days subject to its termination on the date of receipt of the decision of the National Bank of Ukraine to revoke a banking license and liquidate the bank at the latest. The provisional administration shall be terminated after the implementation of the resolution plan or in other cases by decision of the executive directorate of the DGF.

5. During the provisional administration period, the DGF shall enjoy the full and exclusive right to manage the bank in accordance with this Law and regulations of the DGF, and take measures envisaged by the resolution plan.

## Article 35. Requirements to an Authorized DGF Officer

1. The DGF shall be the provisional administrator of an insolvent bank and liquidator of a bank (except cases when the bank is being liquidated under the founders' decision). The DGF may delegate all or a part of its powers as a provisional administrator or a liquidator by decision of the Executive Directorate of the DGF to an authorized officer (authorized officers) of the DGF, a person who has high professional and moral qualities, impeccable business reputation, complete higher education in economics, finances or law (academic degree of "specialist" or higher) and experience required to perform duties within provisional administration.

2. An individual may not be appointed as the authorized DGF officers, if such individual:

1) is a creditor, affiliated person or shareholder of the bank under provisional administration;

2) has a criminal record including outstanding convictions that have not been cancelled under the procedure established by law, or who is a respondent in a criminal case;

3) has overdue liabilities to any bank;

4) has a conflict of interest with the bank under the provisional administration.

3. A conflict of interests shall refer to personal or business interests on the part of the relevant DGF staff member or his/her Fund or his/her spouse, parents, children, siblings in the bank in question, particularly as regards to:

1) debt owed to the bank, debt owed by the bank, or any property rights to the bank's assets;

2) relations with the banks in the previous five years as its affiliated party;

3) failure to meet any obligations to any of the banks in the previous five years;

4) ownership of assets that compete with the bank's assets;

5) employment relations with the bank in the previous five years;

6) other interests that may prevent the Authorized DGF Officer from unbiased performance of functions within the scope of provisional administration of the bank.

4. The Executive Directorate of the DGF shall make sure that the DGF staff member appointed as the authorized DGF officer has no conflict of interest in line with the procedure prescribed by regulations of the DGF. In case of the detection of circumstances resulting in the conflict of interest after the commencement of the provisional administration, the DGF must immediately prevent the staff member from the performance of duties of the authorized DGF officer.

5. The authorized DGF officer shall not have the right to:

1) accept any services, gifts and other valuable assets directly or indirectly from persons interested in the performance of any actions related to activities of the bank subject to the provisional administration;

2) make use or permit to make use of the property of the bank subject to the provisional administration in his/her personal interests or in the interests of third parties, except for cases listed in part nine of Article 36 hereof;

3) make promises or accept liabilities on behalf of DGF without its prior written consent;

4) make use of any services of the bank subject to the provisional administration;

5) disclose the bank secrecy, commercially confidential information, and other insider information, unless it is related to the performance of the functions of the bank's provisional administration.

6. The authorized DGF's officer shall be compensated by the DGF under the approved staffing plan. The DGF Executive Directorate may pay an additional fee to the authorized DGF officer within the scope of its budget for the provisional administration.

7. The life and the health of the authorized DGF officer must be insured in the interests of the said officer at the expense of the DGF.

8. With regard to his/her professional activities, the authorized DGF officer shall be accountable to the DGF, which is responsible for the actions of the authorized DGF officer as to resolution of the bank.

## Article 36. Implications of Introduction of Provisional Administration

1. Starting from the date of the commencement of the bank resolution procedure by the DGF, all powers of the bank governing bodies (those of the general shareholders' meeting, supervisory board, and management board (board of directors)) and of its controlling bodies (the audit committee and the internal audit) shall be terminated. The DGF shall be vested with all powers of managing bodies of the bank and its control bodies from the date of commencement of the provisional administration until the termination thereof.

Within 15 days, but not later than deadlines specified by the DGF, managers of the bank shall cause pecuniary and other valuables of the bank to be handed over to the authorized officer, and within three days — the seals and stamps, accounting and other documents of the bank to be handed over within three days. The parties at fault shall be liable in accordance with the law in case of the evasion of the said duties.

2. All structural units, bodies and officers of a bank shall be subordinated in terms of the exercise of their activities to the DGF and the authorized officer of the DGF within the scope of powers specified by this Law and delegated by the DGF, and act within limits and according to the procedure specified by the DGF / authorized officer of the DGF during the provisional administration period.

3. Transactions carried out by managing bodies and managers of the bank after the commencement of the bank resolution procedure by the DGF shall be null and void.

4. The commencement of the provisional administration shall not be a sufficient ground to terminate, cancel or refuse to perform service agreements (perform works) that are required to ensure the bank's operations, in particular, lease, utility services, communications and security service agreements. In the event of terminating, cancelling or violating the terms of such agreements by the bank's counterparties, the DGF shall have the right to claim damages under the laws of Ukraine.

5. During the provisional administration, it shall be prohibited to:

1) settle the claims of depositors and other creditors of the bank;

2) the enforcement of property (including funds) of the bank, the garnishment and collection of the property (including funds) of the bank (the enforcement proceedings against the bank shall be suspended; the property (including funds) of the bank shall be released from the garnishment, and other decision enforcement measures in respect of the bank shall be reversed);

3) charge forfeits (penalties, fines), other financial (economic) sanctions for the non-performance or the improper performance of liabilities before creditors (at that, the rate of inflation shall not be applied during the entire period of the bank's being late with the performance of its pecuniary liabilities) and liabilities related to the payment of taxes and duties (statutory fees);

4) the netting of counterclaims, including homogeneous counter-claims, the termination of liabilities by agreement (consent) of the parties (for instance, by way of a direct debit), the combination of a debtor and a creditor in the same person;

5) accrue interest on the bank's liabilities to depositors and creditors;

6. Restrictions imposed by sub-section 1 of the fifth part of this Article shall not apply to the following bank liabilities:

1) the deposit payouts under the expired agreements and individual bank account agreements. The payouts in question shall be made within the scope of the reimbursement amount guaranteed by DGF and in the national currency of Ukraine. Deposits in a foreign currency shall be converted in the national currency at the rate as established by the National Bank of Ukraine as of the date of the commencement of resolution of the bank by DGF and introduction of the provisional administration pursuant to this Article;

1<sup>1</sup>) regular contributions to the DGF;

2) expenses related to ensuring its economic operations subject to part 4 of this Article;

3) salaries, royalties, compensation of damages caused to life and health of a bank's employees;

4) the disbursement of the alimony, pensions, stipends, other social and public benefits, the reimbursement for the damage caused by an injury, health impairment, or death, etc., received at the bank starting from the commencement date of the bank resolution procedure;

4<sup>1</sup>) payments of temporary disability benefits, pregnancy and maternity benefits, received at a special bank account opened in accordance with the legislation of Ukraine for a legal entity from the date of the commencement of the provisional administration procedure by the DGF;

5) conducting operations on paying money transfers to natural persons and legal entities received at their accounts following the day of the commencement of the bank resolution procedure by the DGF;

6) sales and purchases of foreign currencies by individuals (physical persons) and legal entities to repay their loan liabilities, execution of any legal requirements concerning compulsory sale of foreign currencies.

The liabilities of the bank covered with items 2 — to 6 of part six of this article shall be met by the bank within the scope of its financial capacity in accordance with the procedure specified by regulatory acts of the DGF.

The DGF may grant the bank a special-purpose loan in order to ensure the performance of the bank's liabilities covered with item 1 of this part. Disbursements under such liabilities at the expense of a special-purpose loan from the DGF must commence within 20 business days (in case of banks whose depositor database contains information about more than 500,000 accounts, within 30 business days) of the date of commencement of the bank resolution procedure by the DGF.

7. Funds received during the temporary administration to the insolvent bank, failing to establish proper recipient should be returned to the bank that serves the payer, indicating the reasons for returning to the procedure established by law.

8. The Law of Ukraine "On Restoring Debtor Solvency or Declaring a Debtor Bankrupt" shall not apply to banks.

9. During the period of the bank resolution and/or liquidation of the bank, the DGF may use technical facilities of such a bank (technical facilities, servers, call center, etc.) in order to minimize its costs.

## **Article 37. Powers of the Authorized DGF Officer**

1. Part one deleted.

2. The DGF itself or the authorized officer of the DGF in case of the delegation of powers shall have the right:

1) perform actions and make decisions within the competence of the bank's management and control bodies;

2) conclude any agreements (enter into any transactions) on behalf of the bank, which are necessary to support operating activities of the bank, perform banking and other economic operations, with due account for requirements established by this Law;

3) continue, restrict or terminate any operation of the bank;

4) to notify the parties to contracts referred to in part two of Article 38 of this Law that the said contracts are null and void, and to take action to make use of consequences of the nullification of contracts;

5) file property and non-property lawsuits in court, including lawsuits obliging a debtor of the bank to provide information about his/her assets;

6) file an application to law enforcement agencies for initiation of criminal proceedings in accordance with the procedure established by the legislation of Ukraine in case of discovery of fraud and other illegal actions of bank employees or other persons with regard to the bank;

7) involve other persons (advisors, auditors, lawyers, appraisers, etc.) into the work in the course of the provisional administration at the expense of the bank on the basis of contract governed by the civil law within the scope of the expense budget approved by the executive directorate of DGF. Such contracts can be rescinded unilaterally on the day of the notification of the other party by the DGF of the said rescission with consequences specified by the civil law;

8) arrange an audit or legal due diligence of the bank's activities at the bank's expense within the limits of the budget approved by the DGF's Executive Directorate;

9) employ, dismiss or transfer to another position any official or employee of the bank, review their official responsibilities, change their salaries in conformity with requirements of the labor legislation of Ukraine;

10) stop the bank's capital distribution or payment of dividends in any form;

11) perform actions aimed at implementation of the resolution plan in accordance with this Law and the DGF regulations.

3. The authorized officer of the DGF shall act on behalf of the bank and within the powers delegated by the DGF.

The authorized officer of the DGF shall have the right:

1) to appoint, dismiss or transfer any managers or employees of the bank, revise their service duties, modify their labor remuneration in compliance with requirements of the employment legislation;

2) exercise other powers envisaged by this Law and delegated by the DGF.

4. During execution of its powers, an authorized DGF officer shall:

1) act on behalf of the bank without power of attorney, have signing authority as to any agreements (transactions), other documents on behalf of the bank;

2) issue orders and instructions, give assignments that shall be subject to compulsory implementation by the bank employees;

3) report the results of provisional administration of the bank to the DGF Executive Directorate.

5. Any person who deliberately obstructs access of the DGF and of the authorized DGF officer to the bank, its premises, means of communication, operating systems, assets, books, records, documents, shall bear responsibility for such illegal actions in accordance with the legislation of Ukraine. Law enforcement agencies shall provide assistance to the DGF in the process of

carrying out provisional administration on the grounds of a written request from the authorized DGF officer.

6. Commitment of actions by any person that obstruct access of the DGF and of the authorized DGF officer to the bank and/or make it impossible to implement provisional administration shall constitute a ground for the DGF to apply to the National Bank of Ukraine with a proposal to revoke the banking license and liquidate the bank.

### **Article 38. Actions to Ensure Preservation of the Bank's Assets, Prevention of Property Loss and Damages of the Bank**

1. The DGF must ensure preservation of the bank's assets and documents.

2. During the provisional administration period, the DGF must ensure the verification of transactions (including contracts) done (concluded) by the bank during one year preceding the date of the institution of the provisional administration in the bank in order to detect transactions (including contracts) being null and void on the grounds specified by part three of this article.

3. Transactions (including contracts) of an insolvent bank shall be declared null and void on the following grounds:

1) the bank has disposed of property for free, has assumed a liability without appropriate property actions taken by the other party, or has waived its own property claims;

2) before being declared insolvent, the bank has assumed liabilities, as a result of which it has become insolvent or the performance of its pecuniary liabilities to other creditors has become impossible in full or in part;

3) the bank has disposed of/handed over for use or acquired/received for use property, paid for results of the work and/or services at prices lower or higher than regular prices (provided that the amount of payment deviates from the value of goods, services and other property received by the bank by 20 or more per cent), or intends to take such action in the future;

4) the bank has made a payment to the creditor or has accepted property as way of the performance of pecuniary claims on the day, when the sum of claims of the bank's creditors exceeded the value of the property;

5) the bank has assumed liabilities (pledge, surety, guarantee, retention, factoring, etc.) to secure the performance of pecuniary claims in the manner other than credit transactions in accordance with the Banking Law;

6) the bank entered into loan agreements providing preferences (privileges) to customers that are not directly envisaged for them by the legislation or internal policies of the bank;

7) there are transactions (including contracts) providing for the payment or the conveyance of other property for the purposes of granting preferences

(privileges) to specific creditors that are not directly envisaged for them by the legislation or internal policies of the bank;

8) the bank concluded into transaction (including a contract) with a related person of the bank, if the said transaction does not meet the requirements of the legislation of Ukraine;

9) the performance of transactions, the entry (re-entry) into contracts by a bank categorized as a problem bank, which has resulted in the increase in the cost of the bank resolution with the violation of provisions of the legislation.

The procedure of the detection of void contracts and the actions to be taken by the DGF in case of their detection shall be specified by regulatory instruments of the DGF

#### 4. The DGF:

1) during the provisional administration and during liquidation, may send a written notice of unilateral nullification of a transaction (including a contract) to the parties to the contract referred to in part two of Article 38 of this Law;

2) shall take measures to demand and obtain (return) the bank's property (funds) conveyed under such contracts;

3) shall have the right to require that the losses caused by the conclusion thereof be restituted.

5. In case of receipt of a notice of void transaction from the DGF on the grounds referred to in part three of this article, the creditor shall be obliged to return the property (asset) received from the bank to the bank; if it is not possible to return the property in kind, the value thereof shall be restituted in cash at market prices prevailing at the time of the entry into the transaction. This void contract may not be used for determining market price.

6. The a DGF shall take measures called for by the legislation to collect overdue debt from borrowers and other debtors of the bank.

7. The DGF must ensure inventory of the bank's assets and liabilities to be taken. The inventory shall be taken to check the availability of the following assets and liabilities of an insolvent bank and the conformity of their book value with the actual value:

1) the cash and the valuables in the vault of the bank;

2) the debt to the bank under loans, including the availability of the collateral to secure the performance of liabilities under loan agreements;

3) the debt to the bank under securities;

4) the debt under the bank's liabilities to creditors;

5) the claims of the bank on a client under unrecoverable loans, including the availability of the collateral to secure the performance of liabilities under such loans.

8. The DGF shall terminate any operations under the transaction during the provisional administration in a bank (including any contract) made (concluded) by the Bank with a certain creditor or other person if such transaction (including any contract) may result in affording advantage to one creditor over the other

one in terms of meeting the requirements, particularly under one of the following conditions:

1) a transaction (including a contract) intended to fulfill obligations of the bank or a third party against an individual creditor made (signed) prior to the date of introducing the provisional administration in the bank;

2) a transaction (including a contract) that causes or may cause a change in the legal priority of creditors' claims under liabilities arising prior to the date of introducing the provisional administration;

3) a transaction (including a contract) that causes or may cause satisfaction of claims, the term of which as of the date of a transaction (including a contract) has not become due, of one creditors provided there are unfulfilled obligations against the other creditors;

4) a transaction (including a contract) led to the fact that a certain creditor has been given or may be given a preference in satisfying the claims that had existed prior to introducing the provisional administration, compared with conditions of the settlement priority with the creditor set forth by this Law.

Termination shall be applied to a transaction (including a contract) specified in this paragraph if it was made within a year prior to the date of introducing the provisional administration in the bank.

9. For the purpose of preserving property (the assets) of the bank, the DGF shall have the right to sell separated units of a bank (including the bank's property, located at such separate unit).

10. All or some of the DGF's powers prescribed by this article may be delegated by the DGF to the authorized officer of the DGF, in whole or in part.

## Article 39. Resolution Plan

1. Within thirty days since the day of appointment of provisional administration, the DGF's Executive Directorate shall approve the resolution plan on the basis of the least cost principle.

2. The resolution plan shall be prepared in accordance with regulations of the DGF. The resolution plan on the basis of the assessment of the financial position and property shall establish actions to resolve an insolvent bank in one of the following ways:

1) liquidation of the bank with direct deposit payout by the DGF in accordance with the procedure established by this Law;

2) liquidation of the bank with alienation of its assets and liabilities, in whole or in part, in favor of the assuming bank;

3) alienation of assets and liabilities, in whole or in part, of an insolvent bank in favor of the assuming bank with withdrawal of the insolvent bank's license and its further liquidation;

4) incorporation of a bridge bank and sale of the bridge bank to an investor accompanied by a transfer of the insolvent bank's assets and liabilities to the investor, and further liquidation of the insolvent bank;

5) sale of the insolvent bank to an investor.

Associations of investors may be the successful tenderers in an open tender in respect of the insolvent bank resolution using one of methods specified in items 4 and 5 of this part.

Within three business days of the commencement of the bank resolution procedure, the executive directorate of the DGF shall make a decision on the conformity/non-conformity of a bank categorized as insolvent with criteria set by regulatory instruments of the DGF as a result of the analysis of reports of such a bank provided by the National Bank of Ukraine.

If the bank meets the criteria in question, the executive directorate of the DGF shall approve the resolution plan stating that the method covered by item 1 of this part is the least-cost method of the bank resolution, and submit a proposal to the National Bank of Ukraine to revoke the banking license and liquidate the bank in question. In this case, the provisional administration shall be terminated on the date of receipt of the decision of the National Bank of Ukraine to revoke the banking license and liquidate the bank.

The executive directorate of the DGF shall make a decision to liquidate an insolvent bank in case of the bank's meeting one of the criteria specified in a regulatory instrument of the DGF.

3. In particular, the resolution plan shall include:

1) comparative analysis and cost substantiation related to the implementation of the measures envisaged by the Part 2 of this Article in the context of choosing a method of the insolvent bank resolution at the least cost of to the DGF. Such analysis shall be performed in accordance with methodology determined by the DGF Executive Directorate;

2) way, procedure and terms of settling relations with the participants, depositors and other creditors of the bank;

3) the conditions of the open tender to determine the assuming bank and/or investor;

4) term and timeframes of the bank liquidation.

4. Upon approval of the resolution plan, provisional administration and/or liquidation of the bank shall be implemented on the grounds and in execution of the resolution plan.

The DGF's Executive Directorate has a right at any time to modify or revise insolvent bank resolution plan. The DGF's Executive Directorate has to modify the resolution plan as to the manner of the insolvent bank resolution, if resolution in the chosen manner has proved to be impossible within the timeframe established by the resolution plan.

5. The DGF shall submit the resolution plan and modification thereof to the National Bank of Ukraine seven days from approval at the latest.

6. The DGF shall take any actions in execution of the resolution plan without notification or approval of participants, debtors, creditors (depositors) of the bank. Participants, creditors (depositors) of the bank shall not have right to

demand a termination or early fulfillment of the bank's liabilities and/or compensation of damages that they incur in result of execution of the resolution plan.

7. If some or all powers of the DGF as a provisional administrator have been delegated to an authorized officer of the DGF (several authorized officers of the DGF), the said authorized officer shall submit a written report on the exercise of powers delegated to the said officer on the next business day after the termination of the provisional administration period at the latest.

The executive directorate of the DGF shall approve a written report on the implementation of the resolution plan over the period of the provisional administration within seven business days of the expiry date of the provisional administration period at the latest.

8. For the purpose of preparing an insolvent bank resolution plan, including for the calculation of potentially available cash that can be received from the sale of the insolvent bank's assets, DGF and/or the authorized DGF officer shall be entitled to involve appraisers, auditors, other persons at the expense of the bank or DGF.

9. In the event when the resolution plan provides for a resolution option envisaged in items 2-4 of part two of this Article, the executive directorate of DGF may take a decision to transfer any remaining potentially marketable assets and liabilities to a Specialized Agency. The authorized officer shall write-off or donate to charity organization(s) the rest of the assets. In such case the provisional administration shall be terminated, and the bank liquidation shall last for no longer than three months.

Throughout the bank liquidation, the DGF shall undertake all actions required to safeguard documents of the bank and terminate the bank as a legal entity. No inventory or other activities shall be required from the DGF.

The Specialized Agency shall undertake all actions required to settle the claims of the creditors of the insolvent bank at the cost of the assets received.

In the event when such assets were not sold during three years following the transfer of such assets to the Specialized Agency, the Specialized Agency shall write-off such assets or donate such assets, and any claims unsettled for a lack of assets of the insolvent bank shall be deemed to be discharged, of which the DGF shall be informed.

10. In case of the insolvent bank resolution by the DGF using one of the methods referred to in items 3 to 5 of part two of this article, an assuming bank or an investor (an association of investors) shall be deemed to be a good-faith buyer, provided that it meets the terms and conditions of this Law.

## Article 39<sup>1</sup>. Specific Features of the DGF Open Tender for the Insolvent Bank Resolution

1. The procedure of the DGF holding an open tender for the resolution of an insolvent bank in one of the manners referred to in items 3 to 5 of part two of Article 39 hereof shall be specified by the internal regulation of the DGF.

2. The tenderer shall lodge a security deposit of a value specified in the tender terms and conditions as set by the executive directorate for a particular bank.

3. The DGF shall refund the guarantee deposit or the balance thereof to the winning open tenderer after the said tenderer meets the terms and conditions of the relevant contract (the debt transfer contract and the claim assignment contract, the share sales contract, the bridge bank share sales contract). The DGF may credit the successful tenderer's guarantee deposit against the performance of these contracts.

4. The DGF shall refund security deposits to participants of the open tender not found to be winning tenderers within three business days of the ascertainment of the tender winner by the DGF.

5. The submission of a single proposal regarding the resolution of an insolvent bank shall not constitute the ground for declaring the open tender to have not taken place.

6. If the successful tenderer in the open tender fails to enter into a debt transfer contract and/or a claim assignment contract, a share sales contract, a bridge bank share sales contract, or fails to comply with terms and conditions of the contract entered into by the successful tenderer in the open tender, at its fault, the guarantee deposit shall not be refunded.

7. The open tender shall be held among pre-qualified entities included into a list set drawn up by the National Bank of Ukraine in accordance with its in accordance with the procedure prescribed by the National Bank of Ukraine in concurrence with the DGF.

## Article 40. Transfer of Assets and Liabilities of an Insolvent Bank

1. In accordance with the resolution plan, the DGF shall provide for alienation of all or a part of assets and all or part of liabilities of the insolvent bank with the relevant priorities in accordance with Article 52 of this Law preserved to an assuming bank in compliance with the provisions established by this Article and regulations of the DGF, on the grounds of a positive conclusion of the National Bank of Ukraine regarding financial standing of the assuming bank and its ability to fulfill obligations to depositors and creditors.

The National Bank of Ukraine shall provide the conclusion specified in this Section within three days at the latest from the date of receipt of the DGF's application prepared in accordance with the requirements of the National Bank of Ukraine.

A bank, whose participants are related parties of the bank, of which assets and liabilities are being transferred to the assuming bank, may not qualify as an assuming bank (except for the insolvent bank resolution with the involvement of the state under Article 41-1 of this Law).

2. The DGF shall compile a register of assets and liabilities to be alienated. The liabilities alienated in the currency as on the date of a contract defined by this article. While alienating liabilities, the DGF shall ensure an unbiased treatment of all creditors of the insolvent bank in line with the priority provided by Article 52 of this Law, with that the liabilities of the bank under deposits of individuals guaranteed by the DGF shall have the highest priority and may not be alienated in part.

3. The assuming bank determined as a result of an open tender (except for the insolvent bank resolution with the involvement of the state under Article 41<sup>1</sup> of this Law) held in accordance with the procedure specified by regulatory acts of the DGF shall issue a written undertaking to assume assets and liabilities.

4. In the course of the resolution of an insolvent bank according to this Law, assets and liabilities of the insolvent bank shall be transferred to the assuming bank at a price determined by the DGF as a result of an open tender (except for the insolvent bank resolution with the involvement of the state under Article 41-1 of this Law) held in accordance with regulations of the DGF in conformity with the principle of the least-cost insolvent bank resolution. The DGF may appraise value of the assets of the insolvent bank using methodology prescribed by the DGF during the preparation for the open tender. The list of assets subject to the independent valuation shall be specified in regulatory acts of the DGF.

Should the executive directorate of the DGF change the method of the insolvent bank resolution from item 3 of part two of Article 39 hereof to item 2 of part two of Article 39 hereof, the open tender shall not be held for implementing the modified method.

5. The liabilities of an insolvent bank shall be transferred to an assuming bank at their book value (with possible payment of bonus by a buyer) on the grounds of a debt transfer agreement under the register of agreements concluded with the relevant creditors (depositors). The conclusion of the debt transfer agreement shall not require obtaining consent of the creditors (depositors). At the same time, no amendments to the agreements with the creditors (depositors) shall be required. The assuming bank shall acquire all rights and obligations of a debtor to the appropriate creditors (depositors) of the insolvent bank.

6. Banks rights of a monetary claim shall be transferred on the basis of the claims assignment agreement under the register of agreements on performance of active transactions and security agreements. Consent of the respective debtors thereto shall not be required. The assuming bank shall acquire all creditor rights and liabilities in relation to the bank's debtors, on which the claims have been transferred under the claims assignment agreement, along with the rights under

security agreements. Introduction of changes to agreements with the respective debtors shall not be required.

7. Agreements listed in Parts 5 and 6 of this Article may be compiled as one document (mixed agreement) and shall not be notarized irrespective of whether the agreements, under which rights and liabilities are transferred, have been notarized.

8. An assuming bank shall be exempted from any payments (taxes, levies, state duties) related to acquisition of assets and liabilities, fee for introduction of changes to state registers, and fee for services rendered by state bodies in connection with such alienation.

9. The DGF shall be obliged to notify debtors and creditors of the conveyance of assets and liabilities to the assuming bank by means of the publication of the generalized information on official web sites of DGF and the insolvent bank, while the assuming bank shall do the same by placing the information on its official web site on the Internet. Each debtor and/or creditor may obtain information about itself on the premises of the insolvent bank and the assuming bank.

10. The next day after the alienation of assets and liabilities is completed, the DGF shall submit the proposal on withdrawal of the banking license and liquidation of an insolvent bank to the National Bank of Ukraine.

After the entry into contracts for the purchase of assets and assumption of liabilities of an insolvent bank to an assuming bank:

1) assets and liabilities transferred to an assuming bank may not be demanded therefrom to the benefit of an insolvent bank; and

2) an owner of shares in an insolvent bank and the insolvent bank may not require reimbursement from the assuming bank for any losses incurred as a result of the transfer of assets and liabilities of the insolvent bank to the assuming bank, on the grounds of invalidity, reversal or illegitimacy of any decisions, transactions or other actions made or preformed in the course of declaring a bank insolvent and its resolution.

The provisions of this part shall be applied, if the assuming bank has accepted assets and liabilities of an insolvent bank in accordance with requirements of this Law.

11. The DGF shall have the right to claim a loss reimbursement from an assuming bank for unjustified refusal to accept the assets and liabilities of an insolvent bank.

## **Article 41. Specific Features of the Sale of an Insolvent Bank**

1. DGF, in accordance with the resolution plan, shall sell the insolvent bank to an investor in compliance with the provisions of this Article and the DGF regulations.

2. An investor must comply with the requirements of the Law of Ukraine “On Banks and Banking”, as well as regulations of the National Bank of Ukraine and the DGF and not be a party related to the bank (members of the bank).

The DGF sells the insolvent bank to the investor, provided that the investor obtains a permit from the National Bank of Ukraine for the acquisition of a substantial interest in the bank, and a permit for concentration from the Antimonopoly Committee of Ukraine.

The permit of the National Bank of Ukraine for the purchase by the investor of a substantial interest in an insolvent bank and the permit for concentration shall take place within two business days of the Antimonopoly Committee of Ukraine under a simplified procedures specified by the National Bank of Ukraine and the Antimonopoly Committee of Ukraine respectively. This procedure shall provide for an investor to comply with the Law of Ukraine “On Preventing and Combating the Legalization (Laundering) of Proceeds of Crime, Financing of Terrorist Activities, and Financing of the Proliferation of Weapons of Mass Destruction” and business reputation requirements.

3. From date of the resolution plan the approval that envisages sale of the insolvent bank to an investor:

1) DGF in line with the law shall acquire the right of disposal of the bank’s shares on behalf of any person, who is a shareholder of the bank, without any additional formalization of powers to sell the shares (shareholdings);

2) DGF shall be obliged to make a decision on reduction of the authorized capital of the bank, determination of the new nominal value of the bank’s shares and/or redenomination of the bank’s shares if the bank’s regulatory capital is less than the bank’s authorized capital. If the bank’s regulatory capital is negative, the bank’s statutory capital is reduced to UAH 1 (one hryvnia);

3) bank’s shareholder shall be prohibited to dispose the bank’s shares (shareholdings) in any way, in particular by way of alienation, transfer into collateral or trust. Information about such encumbrances of shares is to be entered to the record keeping system of titles to shares in the depository system at the request of the DGF;

4) any transactions entered into by the shareholders of a bank in contradiction to the provisions of this Article shall be null and void.

All or part of the DGF’s authorities defined in this part can be delegated by the DGF to the authorized officer.

4. The authorized officer of the DGF shall sell the insolvent bank to the investor selected as a result of holding an open tender in accordance with the procedure prescribed by regulatory acts of the DGF.

The successful tenderer may be several investors (association of investors), who filed a joint financial proposal.

5. The sale of a bank shall be performed based on the grounds of a purchase and sale agreement of bank shares (shareholdings).

The agreement must provide for:



1) investor's obligation to take measures to bring an insolvent bank into compliance with the requirements of Ukraine's banking laws within the specified time-limits;

2) condition as to termination of the agreement in the event of the investor's default on the obligation to capitalize the bank and/or take other actions to restore the bank's solvency and stabilize its operations;

3) penal sanctions for improper performance of the agreement;

4) conditions of non-refund of the security deposit by DGF in case of the investor's failure to perform terms and conditions of the said contract.

Before signing the contract of sale of shares of an insolvent bank investor is obliged to provide to DGF an action plan to bring the insolvent bank in accordance with the requirements of the banking laws.

6. Selling price for an insolvent bank is determined through an open competition held in accordance with the DGF's regulations. The results of competition should comply with the least cost resolution method for an insolvent bank resolution. Proceeds from selling an insolvent bank should be channeled to the DGF budget.

After the entry into a contract for the sales of shares in a bridge bank, and the transfer of such shares to the investor:

1) an investor may not be deprived of the ownership of shares purchased by the investor in the bank, and such shares may not be demanded from such an investor to the benefit of the previous owner;

2) the prior owner of shares in a bank shall not have the right to claim from the investor reimbursement for any losses incurred as a result of the acquisition of shares in the bank by the investor on the grounds of invalidity, reversal or illegitimacy of any decisions, transactions or other actions made or preformed in the course of declaring a bank insolvent and its resolution.

The provisions of this part shall be applied, if the investor has acquired shares in an insolvent bank in accordance with requirements of this Law.

7. The agreement on purchase and sale of shares (shareholdings) concluded by the DGF/authorized officer and the investor shall constitute a ground for registration of the investor's title to shares (shareholdings) and performance of accounting operations with the bank's shares in the depository system. The investor shall inform the DGF of the registration of the title with the share depository system within one day following the registration date.

8. The sale of the bank pursuant to this Article shall be carried out without obtaining shareholders' consent thereto or any other approval of terms and procedure for a sale of the bank shares (shareholdings) to the investor. An authorized DGF officer and an investor shall be exempt from the compensation for the losses associated with the sale of the insolvent bank.

9. The investor must bring the activity of the bank in compliance with the requirements of Ukrainian legislations as to capital and liquidity within one month from signing purchase and sale agreement.

10. The DGF shall terminate the provisional administration the next day following the registration of the ownership of shares with the depository system.

To monitor the progress of implementation of the terms of purchasing agreement by investor DGF shall appoint from among its staff a curator of the bank.

A curator shall carry out functions stipulated by this part within a period not exceeding one month from the day of appointment.

DGF curator has the right to suspend, terminate, restrict any operations carried out by insolvent bank, except for prohibiting the use of the voting right on purchased shares without the consent of the directors, management and control bodies of the insolvent bank; and monitors compliance of all operations of the insolvent bank with the legal requirements.

Lawful requirements of the curator are mandatory for the investor, management and control bodies of the insolvent bank and employees of the bank.

DGF curator is accountable to the executive directorate.

Investor, management and control bodies of the insolvent bank are accountable to the DGF curator and give him/her any information, including classified information.

11. During the period when the DGF curator performs his/her responsibilities under this article:

1) such bank operates in accordance with its resolution plan, and to him subject to the restrictions set out in the fifth and sixth parts of Article 36 of this Law;

2) the simplified procedure for registration of the share issue, charter changes approval by NBU and state registration shall be introduced.

According to this procedure:

1) the filing date of the decision on bank capitalization and amendments to the charter of the National Commission on Securities and Stock Market is the date of shares registration;

2) the date of submission of amendments to the charter of the bank for approval by the National Bank of Ukraine and to the State Registrar for registration is considered to be the date of approval of the National Bank of Ukraine and registration by State Registrar;

3) the date of application for registration of shares issue of the bank is considered to be a registration date of shares;

4) the bank members shall not be notified on convening a general meeting.

12. The Bank shall provide access to the DGF's curator to all information (including databases) to perform functions of the DGF established by this Law and other legislative acts. Preventing the DGF's curator from gaining access to the bank and/or making it impossible for the DGF's superintendent to exercise his or her powers shall constitute the ground for the DGF's requesting the

National Bank of Ukraine to make a decision to revoke the banking license and liquidate the bank.

The persons who deliberately impede the DGF's curator from gaining access to the bank, its premises, information (operating systems, assets, books, records, documents, etc.) shall be liable under part five of Article 37 of this Law.

13. After investor completes measures to bring back the bank in compliance with banking legislation as to liquidity and capital requirements, DGF informs NBU about the need to hold inspection of the bank. DGF provides NBU with all the data and documents needed to hold inspection and make conclusions.

NBU conducts inspection of insolvent bank and send its results to the Fund no later than 15 days from the moment of receipt of Fund's notification about the need of such inspection.

DGF shall terminate authority of curator of the insolvent bank next day after obtaining the results of NBU inspection which proves return of insolvent bank activity to compliance with legislation as to capital and liquidity requirements and informs NBU about such decision.

### **Article 41<sup>1</sup>. Resolution of an Insolvent Bank with the Participation of the State**

1. The state represented by the Ministry of Finance of Ukraine or a bank, in which the state is an owner of an interest exceeding 75 percent (other than a sanation bank) (hereinafter referred to as the "state-owned bank"), may take part in the resolution of an insolvent bank that meets the criteria specified by the Cabinet of Ministers of Ukraine in concurrence with the National Bank of Ukraine in a manner prescribed by items 3 and 5 of part two of Article 39 of this Law.

An insolvent bank shall be resolved with the involvement of the state within two calendar days of the day that follows the date of commencement of the insolvent bank resolution procedure. Within two calendar days during the resolution of an insolvent bank in a manner specified in item 4 or 5 of part two of Article 39 hereof, the DGF shall appoint members of the management board and the council of the bank on the basis of a decision proposal of the Ministry of Finance of Ukraine. Provisions of Article 7 of the Law of Ukraine "On Banks and Banking" shall not apply to a bank acquired by the state under this article.

The state shall acquire the ownership of shares in a bank on expiry of two calendar days of the day of the commencement of the insolvent bank resolution procedure subject to the payment for shares on a deferred payment basis in accordance with the procedure prescribed by this article.

The Cabinet of Ministers of Ukraine, the Ministry of Finance of Ukraine, the National Bank of Ukraine and the Deposit Guarantee Fund must take all necessary measures on time and take all actions necessary to ensure proper communication among themselves and with other state authorities and institutions (including members of Ukraine's depository system), prepare documents and make decisions on time needed to make sure that requirements of this article are met.

In case of the insolvent bank resolution with the involvement of the state in a manner referred to in items 4 or 5 of part two of Article 39 hereof, the state shall act as the investor.

The resolution of an insolvent bank with the involvement of the state shall be carried out at the expense of the state budget and/or a state-owned bank.

2. The Cabinet of Ministers of Ukraine shall make a decision on the state involvement in an insolvent bank resolution in a manner referred to in item 3 of part two of Article 39 hereof on the basis of a proposal of the National Bank of Ukraine specifying the value of assets and liabilities.

For the DGF to take measures to transfer assets and liabilities of an insolvent bank, the property or money amounts of the insolvent bank subject to encumbrances (including those public) and disposal restrictions (including garnishment) prior to the day when it is categorized as insolvent, shall be transferred subject to a written notice to person, in whose interests the garnishment has been imposed, by the authorized officer of the DGF. At that, the transferred property or money shall remain encumbered.

3. The Cabinet of Ministers of Ukraine shall make a decision on the state involvement in an insolvent bank resolution in a manner referred to in item 4 or 5 of part two of Article 39 hereof on the basis of a proposal of the National Bank of Ukraine specifying the method of the bank resolution with the state involvement and calculations of the minimum required capital taking into account the possibility of exchange of the unencumbered pecuniary liabilities of a bank to related parties and unencumbered pecuniary liabilities to legal entities and individuals not related to the bank, excluding the funds of such person on deposit accounts, for additional-issue shares. This proposal must also contain a calculation of the possible need for the additional capitalization of the bank taking into account conservative economic development scenarios specified by the National Bank of Ukraine.

4. A copy of the resolution of the Cabinet of Ministers of Ukraine on the state involvement in the insolvent bank resolution shall be submitted to the DGF on the day of making the said decision. The Cabinet of Ministers of Ukraine shall publicly announce its resolution on its official web site on the day following the day of introduction of the provisional administration.

On the day of receipt of such a resolution, the DGF shall approve a plan of resolution of the insolvent bank in accordance with the procedure prescribed by this Law and regulatory instruments of the DGF and in a manner specified by resolution of the Cabinet of Ministers of Ukraine without searching for other investors.

On the date of receipt of the resolution of the Cabinet of Ministers of Ukraine prior to the capitalization of a bank with the involvement of the state, the DGF shall make a decision to employ an internationally recognized audit firm, which within three months is to carry out an appraisal of the bank's financial standing, determine the bank's capital and its additional capitalization needs taking into

account conservative economic development scenarios specified by the National Bank of Ukraine.

5. On the day of receiving the resolution of the Cabinet of Ministers of Ukraine on the involvement of the state in the insolvent bank resolution under item 4 of part two of Article 39 of this Law, the DGF shall take actions to establish a bridge bank under part seventeen of Article 42 of this Law, have a share tranche registered, have the state registration of a legal entity performed and a banking license issued within time frames and in accordance with the procedure prescribed by Article 42 of this Law.

In the event that the days following the date of the said resolution are days-off, the Cabinet of Ministers of Ukraine shall cause all legal entities and individuals (including employees) needed for establishing a bridge bank, registering a tranche of shares, and effecting the state registration of a legal entity to work during the following two calendar days.

The property (assets) transferred to the bridge bank and the bank's capital requirements shall be appraised in accordance with policies and within time-frames specified in part four of this article.

The property (assets) of an insolvent bank, which is transferred to a bridge bank—in the event that its fair value determined as a result of appraisal by an audit firm is lower than its book value—may be returned by the bank to the insolvent within two months of completion of the appraisal. The DGF and a bank may enter into a contract for the compensation of this value difference by means of the transfer of other property (assets) of such an insolvent bank agreed upon by the bank, or by means of the insolvent bank's providing a compensation for the value difference using other financial instruments and property;

The DGF shall have the right to enter into a contract with a bridge bank for the management of property (assets) not transferred to the bridge bank; the contract in question shall offer an opportunity to the Ministry of Finance of Ukraine to modify conditions and the list of assets placed under management after the obtaining of the ownership of shares in the bank by the state.

6. On the day of receiving the resolution of the Cabinet of Ministers of Ukraine on the involvement of the state in the insolvent bank resolution under item 5 of part two of Article 39 of this Law, the DGF, within the time frame prescribed by this part, shall take actions aimed at the additional placement of shares of a new issue subject to the following conditions:

1) the shareholders are not notified on convening a general meeting;

2) within two business days of the decision of the general meeting to increase the authorized capital of an insolvent bank, the authorized DGF officer shall enter into contracts on behalf of related parties of such a bank for the acquisition of the additional-issue shares in the insolvent bank;

3) shareholders are not notified of convening a general meeting for making decisions on the approval of share placement results;

4) the date of submission of the decision on the placement of additional-issue shares and the changes to the charter of the insolvent bank to the National Securities and Stock Market Commission shall be deemed to be the share tranche registration date;

5) the date of the submission of changes to the charter of the insolvent bank to the National Bank of Ukraine for approval and to the state registrar for registration respectively shall be treated as the date of endorsement of the changes by the National Bank of Ukraine and the date of registration by the state registrar;

6) the date of the actual submission of documents to the National Securities and Stock Market Commission for the registration of a share tranche taking into account the placed additional-issue shares in the insolvent bank shall be deemed to be the date of registration of the insolvent bank share tranche. The availability of a mark of the National Securities and Stock Market Commission confirming the receipt of documents (registration index) shall be treated as the evidence of the actual submission of proper documents;

7) the date of submission of appropriate documents to the National Bank of Ukraine, the state registrar, the National Securities and Stock Market Commission shall be determined on the basis of the document acceptance date mark (registration index) of the relevant state authority.

Prior to making a contribution to the authorized capital, the DGF:

shall be obliged to book provisions of a bank for losses under asset transactions in full, including provisions for risks of the non-repayment of loans by related parties, on the basis of opinions and information received from the National Bank of Ukraine;

shall have the right to dispose of unencumbered money obligations of the bank against related parties, and also unencumbered money obligations of the bank against legal entities and individuals that are not related with the bank, except for funds on current and deposit accounts of these entities through exchange of the said obligations for shares of an additional issue of the bank.

If a bank's capital as a result of provisioning and the exchange of liabilities for additional-issue shares in the bank remains negative or zero, the DGF shall send shares in the insolvent bank to the Ministry of Finance of Ukraine in full for one hryvnia. The funds derived from the sale of the insolvent bank shall be used to top up the resources of the DGF.

If a bank's capital as a result of provisioning and the exchange of liabilities for additional-issue shares in the bank is positive, the DGF shall transfer shares in the insolvent bank to the Ministry of Finance of Ukraine in full or in part on a deferred payment basis. In this case, the share price shall be determined within three months as a result of the appraisal of the fair value of assets and liabilities of the bank with the involvement of an internationally recognized audit firm undertaken at the bank's expense on demand of the Ministry of Finance of Ukraine.

Starting from becoming an owner of shares in a bank, the Ministry of Finance of Ukraine shall be obliged to provide funds or domestic treasury bills to ensure the timely performance of liabilities by the bank with the subsequent exchange thereof for shares in the bank after the completion of all settlements of accounts for shares in the bank with previous owners, in the event that the bank's capital is positive.

After the state becomes an owner of the shares in a bank, the bank shall analyze the solvency of borrowers during two months taking into account:

- the transparency of the structure of ultimate beneficiary owners (controllers);
- the conformity of the financial standing of a legal-entity borrower or the property standing of an individual borrower, their proceeds and income with amounts of received loans, and other liabilities, including those accounted for on off-balance-sheet accounts;
- transparency of their financial and commercial activities;
- the collateral liquidity and value.

The criteria of borrowers subject to the solvency analysis shall be approved by the bank council within two days of the day of its appointment.

If, as a result of the analysis of the solvency of a bank's borrowers, it has not been possible to determine the end beneficial owners (controllers) or if sources of proceeds and income for the repayment of loans are not transparent or insufficient, or if the borrowers have failed to supply enough information to the bank for the analysis of the provided data, the bank shall make provisions for such loans at the rate up to 100 percent, and may require that the said loans be repaid early. The audit firm must take into account the need to make provisions for loans in question in the course of the final appraisal of the value of shares in the bank.

In case of the detection of liabilities of a bank to other persons, which have not been accounted for on balance-sheet and off-balance-sheet accounts of a bank as at the time of the acquisition of the ownership of shares in the bank by the state, the transactions underlying such liabilities shall be deemed void and the liabilities in question shall not be performed by the bank.

7. The state may take part in the insolvent bank resolution either by making monetary contributions to the authorized capital of the bank, or by exchanging domestic treasury bills placed on market conditions for shares in the insolvent, or bridge, or state-owned bank taking part in the insolvent bank resolution.

After the purchase of shares in a bank by the state, the bank shall develop a bank restructuring plan with the involvement of independent (including international) experts or auditors taking into account the best international practices of the assurance of its continued profitable operation.

8. The Ministry of Finance of Ukraine and state-owned banks shall be deemed to be fit and proper investors and investors that meet the requirements of the DGF starting from the date of the decision of the Cabinet of Ministers of Ukraine on the state's involvement in the insolvent bank resolution.

The sale of shares in an insolvent bank or a bridge bank to the Ministry of Finance of Ukraine or a state-owned bank shall not require the investor to obtain an endorsement from the National Bank of Ukraine for the acquisition of a substantial interest in the bank, and a concerted action and/or concentration permit from the Antimonopoly Committee of Ukraine.

## **Article 42. Specific Features of Establishment and Sale of a Bridge Bank**

1. Based on the resolution plan, the DGF shall adopt a decision to establish a bridge bank with the conveyance thereto a part of the assets and all, or a part of, liabilities with the preservation of the priority under Article 52 of this Law of one or more insolvent banks. A bridge bank shall be incorporated as a public joint-stock company.

A bridge bank shall operate within the requirements established for this bank by the DGF regulations.

Managers of the bridge bank established in accordance with item 1 of part sixteen of this Article shall start exercising their official duties without obtaining a written consent to do so from the National Bank of Ukraine. An approval of the National Bank of Ukraine of the appointment and/or professional proficiency and/or business reputation check of a candidate to the position of a such bridge bank managers, the head of the internal audit function, or a financial monitoring officer shall not be required.

For establishing a bridge bank, the DGF shall not be required to obtain an endorsement of the National Bank of Ukraine on acquiring substantial shareholding and a concentration permit from the Antimonopoly Committee of Ukraine.

The bridge Bank shall be governed by the procedures and special aspects specified in paragraphs from four to ten of Article 41-1 of this Law for the bank, which is being withdrawn from the market.

2. The incorporation, registration of a shares issue, state registration of the legal entity and issuing of the banking license to a bridge bank shall be performed in accordance with the simplified procedure established jointly by the DGF, the National Bank of Ukraine, and the National Securities and Stock Market Commission.

3. The National Securities and Stock Market Commission shall register the issue of shares of a bridge bank within one day, including non-working day and holidays from the date of submission of a written petition of the DGF on registration of the issue of shares of the bridge bank along with the set of registration and foundation documents of the bridge bank.

4. The National Bank of Ukraine shall issue a banking license to a bridge bank upon state registration of the legal entity within 1 day, including non-working day and holidays, from the date of receipt of a complete set of documents stipulated by the law.

5. The DGF shall be exempt from payment of taxes, levies, state duties, and fee for services rendered by state bodies in connection with creation of a bridge bank.

6. The DGF shall sell the bridge bank to an investor selected as a result of holding an open tender in accordance with the procedure prescribed by regulatory instruments of the DGF, except for the insolvent bank resolution with the involvement of the state under Article 41<sup>1</sup> of this Law.

7. The investor, which has offered the least-cost method of the insolvent bank resolution and has, as the case may be, undertaken to carry out the accession (merger) of the bridge bank to (with) an existing solvent bank, except for the insolvent bank resolution with the involvement of the state under Article 41<sup>1</sup> of this Law, shall be declared winner of the open tender. The successful tenderer may be several investors (association of investors), who filed a joint financial proposal, subject to the following conditions:

all members of an association of investors have obtained the endorsement of the acquisition of the substantial participation in a bank from the National Bank of Ukraine (if necessary) and have been admitted by the DGF to take part in the open tender in accordance with this Law;

tender offer contains exact information about interests of each of the investors in the share capital of the bridge bank and corresponding recapitalization amount of the bridge bank by each participant of the investors' association;

tender offer contains an unconditional obligation to purchase shares in the bridge bank by each member of the investors' association;

tender offer contains an unconditional obligation to purchase additional shares of the bridge bank by the participants of the investors' association in corresponding ratio if one or several investors fail to purchase the shares.

8. The sales price for the bridge bank shall be determined as a result of an open tender held in accordance with regulatory instruments of the DGF, except for the insolvent bank resolution with the involvement of the state under Article 41<sup>1</sup> of this Law. The open tender results must meet the principle of the least-cost resolution of the insolvent bank. The initial sales price for the bank shall be determined by the DGF according to the methodology specified by regulatory acts of the DGF. A decision of the executive directorate of the DGF may call for the obligatory independent appraisal of the price for the bridge bank to be carried out by appraisers. The funds derived from the sale of the bridge bank shall be used to top up the resources of the DGF.

9. The investor and/or members of the investor association must meet the requirements of the Law of Ukraine "On Banks and Banking" and regulatory acts of the National Bank of Ukraine and the DGF, and may not be related parties of the bank, whose assets and liabilities are to be conveyed to the bridge bank.

The sale of a bridge bank to the investor and/or members of an association of investors shall require that these investors obtain an endorsement from the

National Bank of Ukraine for the acquisition of a substantial interest in the bank, and a concentration permit from the Antimonopoly Committee of Ukraine.

The investor and/or members of an association of investors shall obtain an endorsement of the acquisition of the substantial interest in the bank from the National Bank of Ukraine and a concentration permit from, respectively, the Antimonopoly Committee of Ukraine within two business days under a simplified procedure specified by the National Bank of Ukraine and the Antimonopoly Committee of Ukraine. The said procedure must provide for the investor's compliance with requirements of the Law of Ukraine "On Preventing and Combating the Legalization (Laundering) of Proceeds of Crime or Financing of Terrorist Activities, and Financing the Proliferation of Weapons of Mass Destruction", and business reputation requirements.

Failure to fulfill the undertaken obligation will result in a fine to be paid by the investor to the DGF in the amount determined by the terms of the open tender.

10. All assets and liabilities of the insolvent bank or a part thereof determined in accordance with the resolution plan shall be transferred to the bridge bank.

While transferring liabilities, the DGF shall ensure an unbiased treatment of all creditors of the insolvent bank in line with the priority provided by Article 52 of this Law. This said, liabilities of the bank under deposits of individuals guaranteed by the DGF shall have the highest priority and may not be transferred in part.

11. A bridge bank shall be exempt from any payments (taxes, levies, state duties) related to receipt of assets and liabilities, fee for introduction of changes to state registers, fee for services rendered by state bodies in connection with such transfer.

12. A bridge bank shall acquire all rights under transferred assets (including rights under agreements on pledge, in particular suretyship) in the order of legal succession, and shall assume debtor's liabilities under claims of creditors (depositors) related to the transferred liabilities without introducing any changes to the relevant agreements. The DGF shall be obliged to notify debtors and creditors of the transfer of assets and liabilities of the insolvent bank to the bridge bank by means of the publication of the generalized information on official websites of the DGF, the insolvent bank, and the bridge bank. Each debtor and/or creditor may obtain information about itself on the premises of the insolvent bank and the bridge bank, or by phone (upon the identification).

After the entry into a contract for the sales of shares in a bridge bank, to which assets and liabilities of the insolvent bank have been transferred, and the transfer of such shares to the investor:

1) an investor may not be deprived of the ownership of shares purchased by the investor in the bridge bank;

2) assets and liabilities transferred to a bridge bank may not be demanded therefrom to the benefit of an insolvent bank;

3) an owner of shares in an insolvent bank and the insolvent bank may not require reimbursement from the investor and/or bridge bank for any losses

incurred as a result of the transfer of assets and liabilities of the insolvent bank to the bridge bank;

on the grounds of invalidity, reversal or illegitimacy of any decisions, transactions or other actions made or preformed in the course of declaring a bank insolvent and its resolution.

The provisions of this part shall be applied, if the investor has acquired shares in a bridge bank in accordance with requirements of this Law.

13. A bridge bank established according to item 1 of part sixteen of this article shall lose its status of a bridge bank upon fulfilling all provisions of the agreement on purchase and sale of the bridge bank's shares, as pertains to compliance with capital and liquidity ratios and in the event of selling the bridge bank established under part eighteen of this Article, on the day of notifying the DGF of acquisition of shares of the bridge bank by the investor. The National Bank of Ukraine shall exercise banking supervision subject to the specific features specified in the regulatory acts of the National Bank of Ukraine for six months upon the loss of the bridge-bank status by a bank. A bank, which has lost its bridge-bank status, must ensure submission of documents to the National Bank of Ukraine for the endorsement of the charter (amendments to the charter) of the bridge bank, its managers, the head of the internal audit function, the anti-money laundering (financial monitoring) officer in accordance with requirements of the legislation of Ukraine within one month.

14. The DGF shall submit to the National Bank of Ukraine its proposal to liquidate an insolvent bank not later than on the next day following the transfer of assets and liabilities to a bridge bank.

15. Deposits transferred to the bridge bank shall be guaranteed by the DGF on the same terms that had existed as of the date of their transfer.

16. A bridge bank shall be established with the purpose of:

1) resolution of the insolvent bank under the provisions of paragraph 4 of the second part of the Article 39 of this Law for a period of not longer than three months;

2) incorporating bridge bank as an assuming bank with the aim of implementing of the insolvent bank resolution method provided by paragraph 2 and 3 of the second part of Article 39 of this Law for a period of not more than one year with the possibility of extension of this term to one more year.

17. In case of establishing bridge bank provided for by the second paragraph of the sixteenth part of this Article such a bank will have the following special features:

1) the authorized capital of a bridge bank shall be created at the amount that complies with minimal requirements to authorized capital of a public joint-stock company;

2) the requirements established by the National Bank of Ukraine as to the mandatory prudential regulations, currency limits, quota for mandatory reservation of funds on a bank's correspondent account with the National Bank

of Ukraine, creation of reserves to cover asset losses shall not apply to a bridge bank;

3) it shall be established upon obtainment of a written undertaking of an investor to acquire the bridge bank, and the payment of a guarantee deposit to an account of the DGF held with the National Bank of Ukraine by the investor in the amount specified by the DGF (except for the insolvent bank resolution with the involvement of the state under Article 41<sup>1</sup> of this Law). The National Bank of Ukraine shall apply the regime of blocking such funds on the said account unit the entry into a sales contract for all sales in a bridge bank. After the entry into the said contract, the DGF shall return the guarantee deposit or the balance thereof (the DGF may net off the guarantee deposit against the performance of the bridge bank shares sales contract);

4) a bridge bank shall be exempt from the payment of initial and regular contributions to the DGF. Upon sale of a bridge bank to an investor, this bank shall pay regular contributions to the DGF on the usual terms;

5) an investor, whose bid is in line with the principle of the least-cost bank resolution for the DGF and which has undertaken to take measures aimed to bring activities of the bridge bank into conformity with requirements of the banking legislation of Ukraine for the capital and liquidity target ratios, or undertake the accession (merger) of the bridge bank to (with) an existing solvent bank, except for the insolvent bank resolution with the involvement of the state under Article 41<sup>1</sup> of this Law, shall be declared a successful tenderer in an open tender;

6) upon completion of the procedure of a bridge bank incorporation, issuing the banking license and transfer of assets and liabilities, the DGF shall conclude a purchase and sale agreement with an investor in respect of all shares of a bridge bank. This agreement shall constitute a ground for registration of the investor's titles to shares of the bridge bank and performance of accounting operations with the bank shares in the depository system;

7) the investor must submit an action plan of bringing the insolvent bank into conformity with requirements of Ukraine's banking legislation for capital adequacy and liquidity ratios to the DGF prior to the entry into the insolvent bank shares sales contract (except for the insolvent bank resolution with the involvement of the state under Article 41-1 of this Law);

8) the purchase and sale agreement of the bridge bank's shares shall enclose the investor's obligation to take actions within timeframes specified in the agreement (but in any case within three months) to bring the performance of a bridge bank in line with the banking legislation in respect of the compliance with capital adequacy and liquidity ratios or to take over (merge) the bridge bank to an existing solvent bank. The agreement shall envisage penalties for improper performance of this condition by the investor. Non-performance of this condition shall constitute a ground for termination of the purchase and sales agreement for bridge bank shares upon request of the DGF.

The DGF shall undertake to sell a bridge bank within three months from the date of its incorporation.

If the bridge bank is not sold to the investor within the timeframe specified in this Article DGF may transfer the assets and liabilities of this bank to another bridge bank or not later than the next day following the expiry of the prescribed period, the DGF shall submit a proposal to the National Bank of Ukraine to liquidate the bridge bank. Transfer of the assets and liabilities will be carried out without a conclusion of the National Bank of Ukraine regarding financial standing of the bridge bank as an assuming bank and without financial assistance from DGF.

The National Bank of Ukraine shall make decisions on revocation of the banking license and bank liquidation within three days at the latest from the date of the receipt of the DGF's communication prepared in accordance with the requirements of the National Bank of Ukraine.

The DGF shall supervise the bridge bank's operations until the bridge bank loses its status. The DGF shall ensure adequate corporate management, accountability and control as well as continuous operation of a bridge bank, its performance of all the payments and services until the bank is sold.

After registration of the title to shares of such bank in depositary system, DGF ceases management in such bank.

To monitor the progress of the implementation of purchase and sale agreement by investor in bridge bank DGF shall appoint from among staff members curator of the bank.

DGF curator executes its authority provided in this part within the term that does not exceed 1 month.

DGF curator has the right to suspend, terminate, restrict any operations carried out by insolvent bank, except for prohibiting the use of the voting right on purchased shares without the consent of the directors, management and control of the insolvent bank; and monitors compliance of all operations of the insolvent bank to the legal requirements.

Lawful requirements of the DGF curator are mandatory for the investor, management and control bodies of the insolvent bank and employees of the bank.

DGF curator is accountable to the executive directorate of DGF.

Investors and management and control bodies of the bridge bank are accountable to the DGF curator and give him any information, including classified information.

During the period of DGF curator's authority such bank operates in accordance with the resolution plan and the restrictions specified in paragraphs five and six of Article 36 of this Law are also applied to it.

After the investor completes the transitional measures in accordance with the terms of agreement to bring the bank into compliance with the requirements of the banking legislation of Ukraine on capital and liquidity, DGF curator informs

the National Bank of Ukraine about the need for inspection of the bank. Bank provides National Bank of Ukraine with the necessary information and documents for the inspection and preparation of reasonable opinions.

National Bank conducts inspection in the insolvent bank and provides conclusion to the Fund within 15 working days from the day of receipt of DGF notification about the need to conduct such inspection.

DGF makes decision to terminate the authority of bridge bank curator on the next day following the receipt of the results of the National Bank of Ukraine inspection, which proved that bridge bank activity is brought in compliance with the Ukrainian legislation requirements to capital and liquidity and informs NBU about such decision.

If the results of the inspections didn't prove conformity of the bridge banks with the requirements of the banking legislation of Ukraine on capital and liquidity the DGF makes a proposal to National Bank of Ukraine regarding the liquidation of such a bank. The National Bank of Ukraine shall make decisions on revocation of the banking license and bank liquidation within three days at the latest from the date of the receipt of the DGF's proposal prepared in accordance with the requirements of the National Bank of Ukraine.

Following the decision of the National Bank of Ukraine on revocation of the banking license DGF by agreement with the executive directorate may transfer assets and liabilities of the bridge bank to another bridge bank prior to the start of the deposit payout. Transfer of the assets and liabilities will be carried out without a conclusion of the National Bank of Ukraine regarding financial standing of the bridge bank as an assuming bank and without financial assistance from DGF.

18. In case of establishing bridge bank provided for by the third paragraph of the sixteenth part of this Article such a bank will have the following special features:

1) the authorized capital of a bridge bank shall be created at the amount that complies with minimal requirements to authorized capital of banks;

1<sup>1</sup>. a bridge bank shall be established by decision of the Executive Directorate of the DGF;

2) such a bank shall be supervised by the National Ban of Ukraine in accordance with the procedure established by the regulations of the National Bank of Ukraine;

3) part or all the assets and liabilities of the insolvent bank are transferred to the bridge bank without financial support from DGF;

4) amount of assets and liabilities of the insolvent bank transferred to the bridge bank are equal, and insured liabilities of the insolvent bank may not be transferred in part;

5) loans of the insolvent bank issued to the related parties shall not be transferred to the bridge bank;

6) a bridge bank shall be exempt from the payment of the initial and regular fees to the DGF. Upon the loss of the bridge bank status, the said bank shall pay regular contributions to the DGF on a generally applicable basis.

Pre-conditions for creating such bank are defined in the sub-law of the Deposit Guarantee Fund.

Bridge bank may additionally receive part or all of the assets and liabilities of systemically-important banks, and under special separate decision of executive directorate – of other banks that do not belong to the category of systemically-important on the basis of the resolution plans of such banks and in the manner and under the conditions specified in this part.

The DGF is required to sell the bridge bank during the year from the date of its establishment. On reasonable grounds, this period may be extended by the executive directorate up to one more year.

If within the timeframe specified in this part the bridge bank is not sold to an investor, the DGF has the right to transfer the assets and liabilities of such bank to another assuming bank or no later than the day following the deadline, submits to the National Bank of Ukraine proposal to liquidate such a bank.

National Bank of Ukraine makes decision to revoke banking licenses and liquidate the bank not later than three days from the date of receipt of the DGF proposal prepared in accordance with the National Bank of Ukraine's requirements.

The DGF shall have the right to transfer all, or a part of, the assets and all, or a part of, the liabilities to another bridge bank within the term before the commencement of payouts to depositors subject to the provisions of Article 52 of this Law.

19. The DGF as the owner of the bridge bank is not liable for damage, loss, moral hazard or other loss to the creditors of such bank as well as for the acts or omissions committed in accordance with the resolution plan of the insolvent bank.

The DGF shall supervise the bridge bank operations until the bridge bank loses its status. The DGF shall ensure adequate corporate management, accountability and control as well as continuous operation of a bridge bank, its performance of all the payments and services until the bank is sold.

20. The Bank shall provide access to the DGF's curator to all information (including databases) to perform functions of the DGF established by the laws. Preventing the DGF's superintendent from gaining access to any information about the bridge bank, its insiders, counterparties, etc. shall constitute the ground for the DGF's requesting the National Bank of Ukraine that the banking license be revoked and the bank be liquidated.

The persons who deliberately impede access for the DGF's superintendent to the bank, its premises, information (operating systems, assets, books, records, documents, etc.) shall be liable under part four of Article 37 of this Law.

## **Article 42<sup>1</sup>. Specific Features of the Disposal of Liabilities of an Insolvent Bank Guaranteed by the DGF with the Premium Payment by the Assuming Bank**

1. In case of the decision of the executive directorate of the DGF that the method specified by item 1 of part two of Article 39 is the least-cost method of the insolvent bank resolution for the DGF, the DGF may dispose of liabilities of the insolvent bank guaranteed by the DGF on the basis of a positive opinion of the National Bank of Ukraine on the financial standing of the assuming bank, and its ability to meet liabilities to depositors.

The National Bank of Ukraine shall issue the opinion referred to in this article within two days of receipt of the proposal from the DGF prepared in accordance with requirements of the National Bank of Ukraine.

2. The assuming bank determined as a result of an open tender held in accordance with the procedure specified by regulatory instruments of the DGF shall issue a written undertaking to assume liabilities of the insolvent bank guaranteed by the DGF.

3. Liabilities of the insolvent bank guaranteed by the DGF shall be transferred to the assuming bank at their book value with a premium to be paid by the assuming bank.

The amount of the financial support to an assuming bank provided by the DGF shall be reduced by the amount of the premium from the assuming bank.

Liabilities shall be transferred on the basis of a debt assignment contract in line with the register of contracts with the relevant depositors. The debt assignment contract shall be concluded without obtaining the consent from depositors. In this case, it shall not be required to amend contracts with depositors. The assuming bank shall be vested with all rights and duties of the debtor versus the relevant depositors of the insolvent bank.

4. The DGF shall be obliged to notify depositors of the transfer of liabilities to the assuming bank in accordance with the procedure prescribed by Article 40 hereof.

5. The DGF shall have the right to require that the assuming bank refund damages caused by the non-justified waiver of its undertaking to assume assets and liabilities of the insolvent bank to its benefit.

6. A bank, whose participants are related parties (members) of the bank, of which liabilities are being transferred to the assuming bank, may not qualify as an assuming bank.

7. In the event that no proposal has been submitted, the DGF shall start disbursing the payouts to depositors in accordance with the procedure prescribed by this Law.



## Article 43. Financial Support from the DGF

1. By decision of the Executive Directorate, the DGF may provide financial support to an assuming or bridge bank as a compensation for the assumed financial liabilities. The way, amount and conditions of the financial support shall be established in accordance with regulations of the DGF.

2. The amount of financial compensation to an assuming or bridge bank shall be based on the analysis of the least cost method of bank resolution, as indicated by the bank resolution plan, and shall not exceed the sum of transferred liabilities for the guaranteed deposits within the established marginal guaranteed amount of deposit payout reduced by the assets transferred to the assuming or bridge bank.

3. In case of resolving insolvent bank via transferring of part or all assets and liabilities of an insolvent bank all the DGF may grant a financial support to assuming bank in the form of term subordinated debt. The subordinated debt shall be provided at the interest rate no lower than the discount rate of the National Bank of Ukraine and have defined maturity.

The subordinated debt volume may not exceed the total guaranteed deposit value with the bank transferred to an assuming bank or bridge bank.

4. Financial support may not be provided to any problem or insolvent bank or in favor of such banks' shareholders.

## Section VIII LIQUIDATION OF BANKS

### Article 44. Liquidation of a Bank and Appointment of an Authorized DGF Officer

1. The National Bank of Ukraine shall make a decision on withdrawal of a banking license and liquidation of a bank at the DGF's proposal and on other grounds envisaged by the Law of Ukraine "On Banks and Banking".

2. The DGF shall submit to the National Bank of Ukraine a proposal to revoke a banking license and liquidate a bank:

- 1) in accordance with the resolution plan;
- 2) if the term of provisional administration has expired and/or the resolution plan has not been fulfilled;
- 3) as otherwise prescribed by this Law.

3. The National Bank of Ukraine must make a decision on the withdrawal of a banking license and bank liquidation within five days from the date of receipt of the DGF's proposal to liquidate the bank. The National Bank of Ukraine shall inform the bank on the adoption of decision to liquidate the bank no later than the next day following adoption of such decision.

4. The DGF shall start with the bank liquidation procedure not later than on the business day following the official receipt of the decision of the National Bank of Ukraine to revoke the banking license and liquidate the bank, unless the liquidation is initiated by owners of the bank.

5. The bank liquidation should be completed within two years of the date of commencement of the bank liquidation procedure. The DGF shall have the right to make a decision to extend the liquidation of a bank for up to two years with the possibility of the repeated extension by up to one year.

### Article 45. Bank Liquidation Announcement

1. No later than on the following workday after the DGF receives the decision of the National Bank of Ukraine on withdrawal of the banking license and liquidation of a bank, the DGF shall publish this information on its official website.

2. The DGF shall publish the information about the liquidation of the bank in *Uriadovyi Kuryer* or *Holos Ukrayiny* newspaper within seven days of the date of commencement of the bank liquidation procedure.

3. The information about the liquidation of a bank must contain the following details:

- 1) the name and other details of the bank to be liquidated;
- 2) the date and the number of the decision of the National Bank of Ukraine to revoke the banking license and liquidate the bank;

3) the date and the number of the decision of the executive directorate of the DGF to commence the bank liquidation procedure;

4) the information about the venue and the time frame for the acceptance of claims of creditors.

4. The DGF shall place the announcement containing the information about the bank liquidation in accordance with part three of this article in all premises of the bank used to service customers within seven days of the day of commencement of the bank liquidation procedure.

5. Within thirty days of the publication of the information on withdrawal of the banking license, liquidation of the bank, the bank creditors shall have the right to file their claims to the bank to the DGF. Claims of individuals – depositors within the marginal amount of deposit payout guaranteed by the DGF shall not be filed.

In case the authorized DGF officer with delegated powers in respect of compiling a register of accepted claims of creditors is appointed, creditors shall file their claims to such an authorized DGF officer.

## **Article 46. Consequences of Commencement of the Bank Liquidation Procedure**

1. Part one deleted.

2. Starting from the date of commencement of the bank liquidation procedure:

1) all powers of the bank's governing bodies (those of the general shareholders meeting, supervisory board, and management board (board of directors)) and of its controlling bodies (the audit committee and the internal audit) shall be terminated. If provisional administration has been introduced in the bank to be liquidated, the powers of the bank's provisional administration shall be terminated starting from the date of approval of the decision on withdrawal of the bank's license and liquidation of the bank. The management of the bank shall be dismissed in connection with the liquidation of the bank;

2) banking activities of the bank shall be terminated by way of completion of technological cycle of specific transactions, if this helps to preserve or increase the bank's liquidation pool;

3) all money liabilities of the bank and liabilities related to payment of taxes and levies (mandatory payments) shall be deemed to become due;

4) item 4 deleted;

4') the accrual of the interest, fees, penalties and other expected incomes on active bank operations may be stopped in terms, defined in the client agreements with the bank in case this will help retain or increase the liquidation volume.

5) information about financial standing of the bank shall cease to be confidential or constitute a bank secrecy;

6) conclusion of transactions related to alienation of the bank's property or its transfer to third parties shall be allowed in accordance with the procedure envisaged by the Article 51 of this Law;

7) public encumbrances or restrictions on disposal of any property (funds) of the bank (including their seizure) shall be terminated. There shall be no further imposition of encumbrances or restrictions on the bank assets.

8) the netting of counterclaims, including homogeneous counter-claims, the termination of liabilities by agreement (consent) of the parties (for instance, by way of a direct debit), the debt forgiveness, the combination of a debtor and a creditor in the same person as a result of the entry into any transactions with persons other than a bank, the credits on demand of one of the parties shall be prohibited.

Limitations imposed by this item shall not apply to bank's liabilities related to offsetting counter claims of the same kind, except for limits clearly defined in the law, in the event that the borrower is at the same time a creditor of the same bank and money funds are channeled exclusively on repaying the liabilities under the loan of this debtor against this bank under loan agreements and/ or under debt securities, exclusively accounting for the following:

under the loan agreement, there has been no change of the pledge, namely there has been no change in any of the pledge objects for a pledge object, which is property rights for receipt of the debtor's funds placed on relevant accounts with the insolvent bank within one year, which precedes the date of the beginning of the bank resolution by the DGF;

funds have been held at current accounts and/or deposits of such a debtor as of the date of commencement of the bank resolution by the DGF and terms of such accounts concluded between the debtor and the bank allow for the contractual debiting such accounts.

The above transactions shall be prohibited in any case under contracts with related parties of the bank.

3. No additional liabilities shall arise on the part of the bank (including the payment of taxes and duties (statutory fees), other than expenses directly associated with the performance of the liquidation procedure.

Claims under liabilities of the bank related to the payment of taxes and duties (statutory fees), which have come into existence in the course of the liquidation, may only be stated within the scope of the liquidation procedure; they shall be repaid as the seventh priority as defined by Article 52 of this Law.

4. Managers of the bank (unless the bank has been subject to the provisional administration) shall cause accounting and other documents of the bank, seals and stamps, pecuniary and other valuables of the bank to be handed over to the DGF/the authorized officer of the DGF within 15 days without exceeding the deadlines specified by the DGF. The parties at fault shall be liable in accordance with the law in case of the evasion of the said duties.

5. Any person who deliberately obstructs the access of the DGF/authorized DGF officer to the bank, its premises, means of communication, operating systems, assets, books, records, documents, shall bear responsibility in accordance with the legislation of Ukraine.

## Article 47. Organization of the Work of an Authorized Officer of the DGF

1. The authorized officer of the DGF (several authorized officers of the DGF) shall be nominated by the executive directorate of the DGF. The officer in question shall be subject to rules and requirements of Article 35 hereof.

2. Decisions of the authorized officer of the DGF shall be binding upon employees of the bank to be liquidated.

3. All or part of the powers defined by this Law can be delegated to one or several authorized DGF officers except for the powers to sale bank property. In case of delegating powers to several authorized officers DGF defines margins of discretion of each of them. The powers of the managing bodies can be delegated only to one person.

4. The Executive Directorate approves the procedure for the pre-sale preparation and consolidated sale of the bank (several banks) property as well as distribution of functions between the DGF authorized officers and other DGF staff members.

## Article 48. Powers of the DGF during the Bank Liquidation

1. The DGF shall exercise the following powers—directly or via delegating the powers to an authorized officer of the DGF—from the date of commencement of the bank liquidation procedure:

- 1) exercise powers of managing bodies of the bank;
- 2) accept into its management the estate (including funds) of the bank, take measures to preserve the same, set up the liquidation pool and exercise management functions, and sell the bank's property;
- 3) draw up a register of accepted claims of creditors (enter changes thereto) and take measures aimed at meeting claims of creditors;
- 4) take measures in accordance with the procedure prescribed by the legislation to recover accounts receivable of the bank, the debt of borrowers to the bank and to seek, detect, return (demand) the property of the bank held by the third parties;
- 5) dismiss employees of the bank in accordance with the labor legislation of Ukraine;
- 6) state the refusal to perform contracts and rescind the same in accordance with the procedure prescribed by the legislation;
- 7) hand over documents of the bank, which must be kept, for the storage in accordance with the established procedure;
- 8) exercise powers that are specified in part two of Article 37 of this Law;
- 9) dispose of assets and/or liabilities of the bank, in the event that the resolution plan has called therefor or otherwise in cases covered by this Law;
- 10) return to the initiator of transfer the funds received at correspondent bank account to be credited to current accounts of the bank's clients or for bank

transfer during the liquidation procedure before the bank opened an accumulation account at the National Bank of Ukraine (apart from the funds intended for repayment of liabilities to the bank).

2. The DGF may also exercise other powers that are necessary for the completion of the bank liquidation procedure.

3. All or part of DGF powers defined in this law might be delegated to one of several authorized officers of the DGF. If delegating powers to several authorized officers, DGF must clearly identify what power each person receives. The powers of managing bodies of a bank can only be delegated to one authorized officer.

4. The DGF may involve other persons into its work; their work shall be remunerated at the expense of the bank to be liquidated within the scope of the expense budget approved by the executive directorate of the DGF.

5. The DGF shall have the right to restructure loan debt for a period not exceeding the bank liquidation time frame.

## Article 49. Measures to Prepare for Satisfaction of Creditors' Claims

1. The DGF shall stop accepting creditors' claims after thirty days of the publication date of the bank liquidation announcement in accordance with the Part 2 of Article 45 of this Law. Any claims submitted after the above deadline shall be deemed repaid, except for claims of depositors within the coverage guaranteed by the DGF.

2. Within ninety days of the liquidation announcement in accordance with Part 2 of Article 45 of this Law, the DGF shall perform the following measures:

- 1) calculate the amount of debt owed to each of the creditors and assigns the claims to the relevant level of payoff priority;
- 2) dismiss claims if they are not confirmed by the actual data available to the DGF and, if necessary, present an objection with regard to creditors' claims to the bank in accordance with the procedure established by the legislation;
- 3) make the register of accepted creditors' claims in accordance with requirements of regulations of the DGF.

3. The register of accepted creditors' claims and changes to the register shall be subject to approval by the DGF Executive Directorate.

4. Any disputes as regards to accepting the creditors' claims shall be resolved in court. Court proceedings as regards to the previously mentioned claims shall not suspend the course of the liquidation procedure.

5. The DGF shall notify creditors of the acceptance of their claims within 20 days of the approval of the register of accepted claims of creditors by means of the publication of the notice on the official DGF web site and in the insolvent bank, and in the premises of such a bank in a place accessible by visitors.

6. The DGF may not satisfy claims of creditors before the approval of the register of accepted claims of creditors, save satisfying claims of creditors under transactions securing the liquidation procedure, provided that the said

satisfaction of claims occurs in concurrence with the executive directorate of the DGF;

7. Within 60 days of the date of commencement of the bank liquidation procedure, the DGF shall be obliged send notifications to all clients using the safekeeping services of the bank about the necessity to withdraw their valuables within one months of the date of notification. Material valuables that were under the safekeeping of the bank and were not withdraw by owners within the term stated in the notification shall be deemed the funds that may not be claimed by the bank's creditors. Such valuables shall be transferred into the DGF disposal for return to legal owners.

8. Claims that have not been included in the register of accepted creditors' claims shall not be subject to satisfaction in the course of the liquidation procedure and shall be deemed to have been paid off.

### **Article 50. Formation of the Bank Liquidation Pool**

1. From the date of the commencement of the bank liquidation procedure the DGF shall start inventory and appraisal of bank assets for the purpose of forming the bank's liquidation pool.

2. The bank liquidation pool shall include all and any real estate and movable property, cash funds, titles, and other bank assets. The liquidation pool shall not include property in the cases, which are explicitly specified in the law, as well as the license, goodwill.

Funds remaining after the satisfaction of secured claims and the coverage of expenses associated with the upkeep, the preservation and the sale (the performance of transactions with the participation of the bank) of the collateral object shall be included into the liquidation pool.

If the property excluded from the circulation is a part of the bank's property, the DGF shall be obliged to hand it over to appropriate persons in accordance with the established procedure.

The DGF having detected an interest held by the bank in the jointly owned property, shall raise the issue of the separation of the said interest for the purposes of the satisfaction of claims of creditors in accordance with the established procedure.

The property, in whose respect the bank is a user or a custodian, shall be returned to the owner in accordance with the law or the contract.

3. The bank's property included in its liquidation pool shall be appraised in a manner established by the DGF. The list of property items of the bank to be appraised by parties to valuation activities (appraisers) shall be specified by the DGF. The DGF shall have the right to engage professional appraisers whose services shall be paid from the bank liquidation pool.

4. The bank's property inventory and the liquidation pool formation shall be completed within six months of DGF's approval of the decision to liquidate the bank and revoke the banking license. The results of the bank's property inventory

and liquidation pool formation shall be stated in the report to be approved by the DGF Executive Directorate.

5. Mortgage assets being managed by the bank or securing the performance of liabilities under the fixed-income certificates issued by the bank, as well as the funds on the building fund account or the property of a real-estate transaction fund, including the funds on its account being managed by a bank shall not be included into the liquidation pool of the bank. These assets shall be administered in accordance with Laws of Ukraine "On Mortgage Lending, Consolidated Mortgage Debt Transactions and Mortgage Certificates" and "On Financial Lending Mechanisms and the Property Management during the Housing Construction and Real Estate Transactions".

Assets of a bank included into the mortgage cover of mortgage bonds shall not be included into the liquidation pool of the bank. The alienation of these assets, for instance, the forced alienation, shall take place in accordance with the procedure envisaged by the Law of Ukraine "On Mortgage Bonds".

Assets of a non-state pension fund, whose custodian is the bank, shall not be included into the liquidation pool of the said bank. The assets in question shall be returned in accordance with the Law of Ukraine "On Non-state Pension Provision".

### **Article 51. Sale of the Property of a Bank to Be Liquidated**

1. The executive directorate of the DGF shall approve pre-sales property preparation measures for the property of one bank or several banks (pooled properties, integral property complexes, blocks of shares, etc.), the repair of fixed assets, the completion of the non-completed construction projects, the implementation of real-estate development projects (for instance, real-estate maintenance operations) on land plots owned by the bank with the attraction of investments, the removal of specific parts, units and assemblies, etc. from the unusable assets for the subsequent sales.

2. The DGF shall start with the pre-sales preparation and the disposal of the bank's property in accordance with the procedure specified by this Law and regulatory acts of the DGF after the approval of results of the inventory of the bank's estate and the formation of the liquidation pool by the executive directorate of the DGF at the highest price as soon as possible.

3. The DGF shall approve methods, procedure, composition and disposal conditions of the bank's property included into the liquidation estate; if appropriate, it shall organize the consolidated sales of the property of several banks undergoing liquidation procedure at the same time.

4. The DGF shall be prohibited from disposing of the bank's property until the approval of the methods, the procedure, the composition and the conditions of disposal of the property of such a bank by the executive directorate of the DGF, unless the executive directorate of the DGF grants a permit for the disposal of specific property items in order to forestall losses or risks of the loss thereof or damage thereto, and in cases specified by this Law.

5. The DGF shall have the right to conclude contracts for granting specific property (asset) items of the insolvent bank on lease until the disposal of the said assets in accordance with the established procedure in order to raise income.

6. The property (assets) of a bank or several banks (asset pools) may be disposed of using the following method:

- 1) at an open tender (auction);
- 2) by means of the direct sale to a legal entity or an individual.

Sale of bank's property (assets) using the method provided for by this part can be done electronically (at e-trading platforms).

7. The procedure for the sales of the bank's property in the course of the liquidation procedure shall be specified and governed by regulatory instruments of the DGF.

The executive directorate of the DGF shall make the following decisions:

- 1) to approve a list of assets that cannot be sold;
- 2) to combine the property of a bank or several banks into pools and/or to sell specific inventory objects;
- 3) on the property pre-sales preparation time frames and measures;
- 4) to approve terms and conditions of open tenders (including auctions conducted under methods of price increase and without any limitation of minimum selling price of the property), such as guarantee deposit amounts, lot and auction increment, the procedure for price reduction, fixing or refusal to fix a minimum sales price;
- 5) to limit the total number of open tenders, where at the same items or asset pools are being offered for sale;
- 6) to hold open tenders (auctions) by the DGF authorized representative or a trade agent, commodity exchange, etc., for instance, in case of sales of asset pools consisting of the property items of several banks.

Information on the selected method and order of sale (conditions, terms, payment mode, venue and initial price, etc.) of the property of a bank or several banks shall be made public at the official website of the DGF and at the website of the bank, whose property is being sold.

8. For the purpose of holding open tenders under an agreement, a tender process organizer may be engaged, i.e. a legal entity entitled to conduct tenders in accordance with the statutory documents. The tender organizer shall not have any conflict of interests with the bank which property is being sold.

9. The property of the bank, whose circulation (turnover) is subject to restrictions, shall be sold from an open tender. The parties permitted to own the property in question or hold the same otherwise on the basis of another proprietary interest in accordance with the legislation and being in possession of appropriate licenses and permits shall take part in such a tender.

10. The DGF shall organize the sale of securities (including derivative securities) via a professional stock market members in accordance with the procedure

specified by the legislation on the basis of a contract concluded between the DGF and the securities trader.

11. The shares in a private joint stock company or interests in a limited liability or additional liability company owned by a bank shall be sold taking into account the Laws of Ukraine "On Joint Stock Companies" and "On Corporations".

12. The DGF shall sell the bank's property as an integral property complex. In the event that it has not been possible to sell the bank's property as an integral property complex, the DGF shall sell the bank's property in parts.

13. The following shall be sold through an open tender without limiting the lowest sales price or directly to a legal entity or a natural person:

- 1) fixed assets, whose appraised value does not exceed 10 minimum salaries as of the selling day;
- 2) low-value and non-durable objects, fixed assets, non-current assets, etc., the net book value of which does not exceed (by group of assets) 10 minimum wages as of the selling day shall be sold without independent appraisal.

Such property may be sold by the DGF directly or on a commission basis via a retail organization.

14. Property (assets) of a bank remaining at the end of the bank liquidation procedure, unless claims of all categories of the bank's creditors have been satisfied, shall be disposed of by holding an open tender/auction without limiting the minimum sales price.

15. If pools of assets of several banks are sold, the sales-related income and expenses shall be allocated to banks in proportion to the value of the property (assets) of the specific banks in the pool.

16. The bad debt remaining at the end of the bank liquidation procedure (claims associated with credit transactions, securities owned by the bank and accounts receivable), the recovery rate of which is less than 5 percent as determined by the DGF based on the analysis of relevant documents shall be written off from the bank's balance sheet.

17. The DGF shall be obliged to promulgate information about the property (assets) offered for sale in printed media determined by the executive directorate of the DGF, on the website of the bank, and the official website of the DGF on the Internet. Requirements applied to the content and terms of the information disclosure regarding the sale of the banks' property shall be governed by regulatory instruments of the DGF.

## **Article 52. Sequence and Procedure of Satisfaction of Claims to a Bank, Payment of Expenses and Performance of Payments**

1. Funds obtained as a result of the liquidation and sale of the bank's property (assets) shall be used by the DGF for the satisfaction of claims of creditors in the following priority sequence:

1) liabilities, which have come into existence as a result of the infliction of the damage to the life and health of individuals;

2) pecuniary liabilities related to wages and salaries, which have come into existence from the bank's liabilities to employees before the decision to revoke the banking license and liquidate the bank;

3) claims of the DGF, which have come into existence in events specified by this Law, including the coverage of expenses of the DGF referred to in item 7 of part five of Article 20 hereof and expenses associated with the consolidated sale of assets;

4) claims of individual depositors (including sole traders) who are not related parties of the bank to the extent exceeding the amount disbursed by the DGF;

5) claims of the National Bank of Ukraine, which have come into existence as a result of the reduction in the value of the collateral provided to secure refinancing credit facilities;

6) claims of individuals, including sole traders, not being related parties of the bank whose payments or payments to whom have been blocked;

7) claims of other depositors, not being related parties of a bank, and legal entities being clients of the bank (not being related parties of a bank);

8) other claims, other than the subordinated debt claims;

9) claims of related creditors of the bank (individuals, including sole traders, and legal entities);

10) the subordinated debt claims.

Claims on a bank not met due to the lack of its property shall be deemed extinguished, but this does not deprive the DGF or the authorized DGF officer of the right to submit claims against a related party of the bank in accordance with the procedure specified in part five of this article.

2. The expenses related to the performance of the liquidation procedure shall be paid out of turn throughout the whole bank liquidation procedure within the scope of the expense budget approved by the DGF. These expenses shall include, for instance:

1) expenses on the publication of the announcement of the bank liquidation, the banking license revocation, and the information about the sales of the bank's property (assets);

2) expenses related to the maintenance and preservation of the property (assets) of the bank;

3) expenses for the appraisal and sale of the property (assets) of the bank;

4) audit expenses;

5) expenses on the payment for services of individuals employed by the DGF to support the performance of powers vested in the DGF;

6) expenses on the payment of the severance pay to the dismissed employees of the bank;

3. The bank's property being the object of pledge shall be included into the liquidation pool, but may only be used for the out-of-turn satisfaction of claims

of a pledgee. The pledgee shall have the right to collect the pledged property in accordance with the procedure prescribed by the current legislation or the pledge contract, and have its claims satisfied at the expense of the pledged property at a price determined by an appraiser appointed by the DGF.

In the event that the DGF sells the mortgaged property, the funds received from the sale of such property shall be used for discharging claims of the pledge holder however not exceeding the principal debt amount secured by such property together with accrued interests net of DGF's expenses to maintain and sell these assets. The remaining funds shall be included into the liquidation pool. The rest of funds shall be included into the liquidation pool of the bank.

In the event of insufficiency of funds from the sale by the DGF of the pledged property for the satisfaction of the claims of the pledgee, the non-satisfied claims shall be satisfied in the sequence prescribed by this Law.

4. The claims of each subsequent priority shall be satisfied upon the receipt of the proceeds from the sale of the property (assets) of the bank after the complete satisfaction of claims of the preceding priority. If the funds derived from selling the estate (assets) of the bankrupt are not sufficient for meeting all the claims of the same priority grade, the claims shall be met in proportion to the amount of claims held by each creditor in the said priority grade. In case of the waiver by the creditor of the satisfaction of a claim recognized in accordance with the established procedure, the DGF shall disregard the amount of pecuniary claims of the said creditor.

5. If the property of the bank is not sufficient, the DGF or the authorized DGF officer shall require a related party of the bank, the actions or failure to act of which resulted in losses incurred by the creditors and/or the bank, and/or any related party of the bank, which directly or indirectly benefited from such actions or failure to act, to compensate for the damage caused to the bank.

If the DGF receives refusal to satisfy such claims or the failure to comply with the demand within the time specified by the DGF or the authorized officer of the DGF, the DGF may submit such claims to court.

The liquidation of an insolvent bank shall not be a ground for the completion of the examination by court of a claim submitted by the DGF against a related party of the bank, and shall not be a ground for the release from liability of a related party of the bank, the actions or failure to act of which resulted in losses incurred by the creditors and/or the bank, and/or any related party of the bank, which directly or indirectly benefited from such actions or failure to act, to compensate for the damage caused to the bank.

## Article 52<sup>1</sup>. Retention of Documents

1. The DGF shall ensure the proper execution, arrangement and storage of all documents of insolvent bank (including those financial and business-related) during the liquidation procedure.

2. The DGF shall be obliged to ensure the preservation of archive documents of the insolvent bank before the liquidation of the insolvent bank, and determine the place for the subsequent storage thereof in concurrence with the specifically authorized central executive agency in the field of the archival affairs or an archival institution authorized thereby.

3. The National Bank of Ukraine shall be obliged to accept archival documents of an insolvent bank for storage as soon as the documents are available from the DGF.

### **Article 52<sup>2</sup>. Specialized Agency**

1. DGF shall incorporate a Specialized Agency as a limited liability company. The authorized capital of a Specialized Agency shall be established at the level that meets the minimum requirements for the authorized capital of a limited liability company.

2. A Specialized Agency may be established solely for the purpose of creditors' claims settlement at the cost of assets (properties) of an insolvent bank transferred to the Specialized Agency pursuant to this Law.

The requirements set in the Law of Ukraine "On Banks and Banking", Law of Ukraine "On Financial Services and State Regulation of Financial Markets", and Law of Ukraine "On Collective Investment Institutions" shall not apply to a Specialized Agency.

A Specialized Agency shall report to DGF in the format, under the procedures and within the terms as set by DGF.

The system of personified registration of creditors' claims and assets (property) of an insolvent bank, transferred to specialized institutions, should contain information on each asset / liabilities, including its value/aggregate value of indebtedness, and claim's priority. Accounting for assets and liabilities of an insolvent bank, which were transferred to specialized institutions, carried out separately per insolvent bank.

3. Throughout the liquidation of an insolvent bank, the authorized DGF officer may transfer potentially marketable assets and liabilities of the insolvent bank to the Specialized Agency. The Specialized Agency shall undertake all actions required to sell the assets and settle the claims of the creditors, in accordance with the priority lines defined in Article 52 of the Law at the cost of the transferred assets within three years.

From the date of the transfer of the potentially marketable assets and liabilities of the insolvent bank to the Specialized Agency, the authorized DGF officer shall:

- 1) write-off or donate the remaining assets of the insolvent bank;
- 2) compile the liquidation balance of the bank and report, and submit these to the executive directorate for approval;
- 3) undertake all actions required to deregister the insolvent bank as a legal entity with the State Register of Legal Entities and Sole Traders.

4. Once the period set in part three of this Article expires, the Specialized Agency shall write-off or donate the transferred assets.

Any creditor claims transferred to a Specialized Agency and unsettled for a lack of assets (properties) of the insolvent bank shall be deemed to be repaid.

### **Article 53. Completion of the Bank Liquidation**

1. A decision to transfer property (assets and liabilities) of an insolvent bank to the specialized entity shall be made by the executive directorate of the DGF two months prior to the expiry of the bank liquidation period at the latest. The transfer of estate (assets and liabilities) to the specialized entity must be completed before the expiry of the bank liquidation period.

2. The DGF shall draw up the liquidation balance sheet and a report as a result of the performed liquidation of a bank to be approved by the executive directorate of the DGF.

The report shall be compiled in accordance with regulatory acts of the DGF and must contain, for instance, the information about sales of the estate of the bank and the satisfaction of claims of creditors and/or the exhaustion of opportunities for taking measures aimed at satisfying claims of creditors.

3. The liquidation of the bank shall be deemed completed and a bank shall be deemed liquidated upon entry of the relevant record thereof into the Universal State Legal Entities and Sole Traders Register.

4. The powers of the DGF as a liquidator in respect of such a bank shall be terminated on the date of entry of the record into the Universal State Legal Entities and Sole Traders Register, and the DGF shall send the National Bank of Ukraine the report on completion of the liquidation of the bank.

5. No later than on the next business day after the entry on liquidation of the bank is made into the Universal State Legal Entities and Sole Traders Register, the DGF shall publish on its official website the information on completion of the bank liquidation and termination of the bank as a legal entity.

### **Article 54. Appealing DGF Decisions**

1. Decisions made in accordance with this Law by the DGF, National Bank of Ukraine, DGF's employees that perform their functions as provided for by this Law, including decisions made in the process of provisional administration, liquidation of the bank, execution of the bank resolution plan, may be challenged in the court.

2. Appealing the decisions, specified in part 1 of this Article, shall not suspend execution of the disputed decision or action.

## **Section IX**

# **COORDINATION OF DGF ACTIVITIES WITH THE NATIONAL BANK OF UKRAINE**

### **Article 55. Collaboration and Coordination between the DGF and National Bank of Ukraine**

1. The DGF and National Bank of Ukraine shall collaborate to ensure the stability of the banking system of Ukraine and protect the interests of depositors and other creditors of banks. To that end, the DGF and National Bank of Ukraine shall conclude a cooperation agreement, which shall envisage a framework for cooperation between these institutions in the process of regulating and supervising activities of banks, application of enforcement measures to them, bank inspections, taking measures to resolve insolvent banks.

2. The DGF and National Bank of Ukraine shall ensure timely communication about any findings and conclusions on operation of the banks necessary to carry out their duties. The National Bank of Ukraine shall inform DGF of the list of actions that the National Bank of Ukraine is planning to apply to a bank under identified risk(s) no later than within 10 days following the date of request of DGF.

3. The DGF and National Bank of Ukraine shall be entitled to access information and documents related to questions which fall under their competence.

4. The DGF Managing Director or a person acting on his/her behalf should be invited to meetings of the Board of the National Bank of Ukraine which are dedicated to issues of bank supervision and/or application of remedial actions to banks. The Managing Director or persons acting on his/her behalf shall be unconditionally invited to participate in the meeting of the Board where matters of assigning insolvency status are discussed.

5. Seeking to collaborate and coordinate their efforts, the DGF and National Bank of Ukraine shall call operational meetings at least once a quarter or more often as requested by either manager of these institutions.

6. The DGF and National Bank of Ukraine shall have the right to initiate amendments to each other's regulations.

### **Article 56. Providing Information to the DGF**

1. The DGF shall be entitled to receive documents and information from the National Bank of Ukraine and state executive bodies as needed for the DGF to perform the functions as specified in this Law.

2. The next day after approving the relevant decision or receiving the information, the National Bank of Ukraine shall notify the DGF about:

1) entering data to the State Register of Banks, issuing or revoking a bank license;

2) applying remedial actions to a bank;  
3) decision on classification the bank as problem or insolvent;  
4) the results of inspection of a problem bank and provide copies of the inspection reports from the last 12 months;

5) results of execution by a problem bank of financial rehabilitation measures.

3. Every month the National Bank of Ukraine shall send information to the DGF related to banks activities and their financial standing under the cooperation agreement.

4. Upon the DGF's request, the National Bank of Ukraine shall provide it with the documents and information, including data obtained in the course of bank supervision, on operations of the bank, its liquidity, solvency, profitability, and other relevant documents and information necessary for the DGF to perform its functions as envisaged by this Law.

### **Article 57. Providing Information to the National Bank of Ukraine and Other State Authorities**

1. The DGF shall provide information to the National Bank of Ukraine within three days after the approval of the relevant decision concerning:

1) violation by a bank of the provisions of this Law, the DGF regulations, and legislation of Ukraine;

2) results of the bank inspection by the DGF;

3) introduction of a provisional administration or liquidation of a bank;

4) approval of the bank's resolution plan;

5) fulfillment of the bank's resolution plan in general and of its separate phases, including incorporation of the bridge bank, sale of the insolvent bank or bridge bank to an investor, transfer of assets and liabilities of the insolvent bank to the assuming bank;

6) termination of the bank's provisional administration and completion of the bank liquidation procedure;

7) risks associated with the operations of banks.

2. The DGF shall provide the National Bank of Ukraine on a timely basis with any discovered data or information which proves a bank's violation of the requirements of the legislation of Ukraine.

3. Once a quarter or at the first notice of the National Bank of Ukraine, the DGF shall provide the former with the information on the status of the bank's provisional administration or liquidation.

4. The DGF shall submit any other information and other documents to the National Bank of Ukraine within the term and in a manner prescribed by this Law.

5. The DGF shall provide any additional information as requested by the State Financial Monitoring Agency of Ukraine relating to financial transactions that became a subject-matter of financial monitoring of the insolvent bank including the bank undergoing liquidation procedure.



## **Article 58. Direct Debiting of Contributions that Have Not Been Paid to the DGF on Time**

1. If the bank has been in default on payment of contributions to the DGF for one month from the day of payment set forth in this Law, the DGF shall have the right to apply to the National Bank of Ukraine demanding direct debiting of contributions to the DGF, as well as penalties accrued from the bank's correspondent account.

2. The National Bank of Ukraine shall undertake to fully satisfy the DGF's request within three days from receipt of such demand by debiting funds from the bank's account (or partially – to the extent of the funds available on the bank's account) and crediting thereof to the account of the DGF, and to notify the DGF of satisfaction or impossibility to satisfy its request.

3. An exceptional reason for non-satisfaction of the DGF's demand shall be lack of funds in the bank's correspondent account.

### **The President of Ukraine**

City of Kyiv  
23 February, 2012  
№ 4452-VI