

# LAW

No. 9662, dated 18.12.2006

## ON BANKS IN THE REPUBLIC OF ALBANIA

(abrogated with Decision Nr. 1 dated 12.01.2011 of Constitutional Court)

(amended with Law nr. 10 481, dated 17.11.2011)

(abrogated with Law Nr.133/2013)

(amended with Law nr. 131 dated 22.12.2016)

In accordance with Articles 78, 81(1) and Article 83 (1) of the Constitution of the Republic of Albania, upon the proposal of the Council of Ministers,

### THE ASSEMBLY OF THE REPUBLIC OF ALBANIA DECIDED:

#### CHAPTER 1

#### GENERAL PROVISIONS

##### Article 1

##### Purpose

The purpose of this Law is to set out the criteria and rules for the establishment, licensing, organization, management, protection, and liquidation of banks in the exercise of banking and financial activity as well as supervision of such activity in the Republic of Albania.

##### Article 2

##### The scope of application

1. The Bank of Albania shall be the authority charged with the implementation of this Law, in accordance with the Law “On the Bank of Albania”.
2. This Law shall apply to persons exercising banking and financial activities as defined in Articles 4 and 54 of this Law, except for the Bank of Albania and other subjects whose activity is regulated by a separate law.
3. The Bank of Albania, through its by-laws, has the right to determine whether the subjects enlisted in Article 126, exercising activities pursuant to Article 54 of this Law, as a result of their nature, volume of activity or the origin of their financial sources can be excluded from the application of this Law.

### **Article 3**

#### **Banking System**

The banking system in the Republic of Albania is comprised of the Bank of Albania, whose status is defined in the Law “On the Bank of Albania”, as well as banks and branches of foreign banks, whose status is defined through this Law.

### **Article 4**

#### **Definitions**

**I.** For the purpose of this Law, the following terms shall have these meanings:

- 1) “Bank” – shall be the legal person with the legal seat in the territory of the Republic of Albania, who carries out banking and other activities, as defined in this Law.
- 2) “Banking activity” – shall mean the receipt of monetary deposits or other repayable funds from the public, and their use to grant credits or placement for its own account.
- 3) “Financial activity” – shall mean any activity as prescribed in Article 54, paragraph 2 of this Law.
- 4) “Licence” – shall mean the administrative act issued by the Bank of Albania, by virtue of which rights are conferred to a legal person to carry out banking and financial activities, as defined in this Law.
- 5) “Monetary deposit” – shall mean:
  - a) any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a bank must repay under the legal and contractual conditions applicable, and
  - b) any debt evidenced by a certificate issued by a bank or a branch of a foreign bank.
  - c) an entity shall not be considered as to have received monetary deposits by the public if deposits are received immediately upon issue of electronic money by this entity.
- 6) “Credit” – shall mean any legal undertaking to disburse a sum of money, in exchange for a right to repayment of the amount disbursed and outstanding and to payment of interest or other banking commissions on such amounts as well as any extension of the due date of a debt security or other right to payment of a sum of money.
- 7) “Participation” – shall mean any ownership rights on the capital or any shares with voting rights of a legal person.
- 8) “Qualifying holding” – shall mean a direct or indirect holding in a legal person which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management or policies of the legal person in

which the holding subsists.

9) “Persons or group of connected persons” – shall mean:

9.1 In case of:

- a) two or more persons who constitute a single risk for the bank or for the branch of the foreign bank because one of them, directly or indirectly, has control over the other or others; or
- b) two or more persons who constitute a single risk for the bank or for the branch of the foreign bank, because one of them exerts, directly or indirectly, significant influence over the other or others; or
- c) two or more connected persons in an affiliate relationship; or
- d) two or more persons between whom there is no relationship of control or influence, as defined in letters (a), (b) of this paragraph, but who are to be regarded as constituting a single risk for the bank or the branch of the foreign bank because they are so interconnected that, if one of them were to experience a reduction in the financial situation it is expected that a similar occurrence may happen to the other or other persons because the loss, profit or solvency of one of them could be transferred to the other or others; or
- e) two or more persons, who, on the basis of a legal relationship offer specialized services for each other or another person; or
- f) administrators of a person and their close relatives.

9.2. In case of persons with a special relationship with a bank, as follows:

- a) the shareholders of the bank owning 5% or more of the capital or of the shares with voting rights in the Shareholders Assembly of the bank; or
- b) directors or the representatives of the bank, or
- c) persons who have entered into a contract with the bank under special terms, or
- d) close relatives of the persons enlisted in letter “a”, “b” and “c” of this paragraph, or
- e) legal persons, which have more than 20% of their capital, or share with voting rights owned by persons enlisted in letters “a” to “d” of this paragraph, or
- f) legal persons, in which the bank owes more than 20% of the capital or the shares with voting rights, or that controls these legal persons in another way.

10) “Close relatives” of a person shall be:

- a) children (adopted or not)
- b) the children of one’s children
- c) spouse
- d) parents
- e) brothers, sisters and their children
- f) persons under the custody of another person.

11) “Control” – shall mean the relationship in which a person:

- a) owns in a direct or indirect way the majority of shares or voting rights of a legal person; or

- b) solely owns the majority of voting rights of a legal person on the basis of an agreement with the partners or the other shareholders; or
- c) *de facto* determines the decisions taken by the legal person; or
- d) controls in any way the election, appointment and dismissal of the majority of the administrators of the legal person.

12) “Subsidiary/branch” – shall mean the legal person, whose more than half of its capital is owned by another legal person. All the subsidiaries of a subsidiary are to be considered subsidiaries of the legal person who exerts control over that subsidiary.

13) “Affiliate” – shall mean two or more subsidiaries of a legal person, who exerts direct control on them.

14) “Branch of a bank” – shall mean the organizational unit, legally dependent on the bank, which carries out directly all or some of the activities that the bank does, on behalf and for the account of the latter.

15) “Branch of a foreign bank” – shall mean the branch of a bank licensed from the competent authority of another country different from the Republic of Albania, to carry out banking activities. Such branch shall be licensed by the Bank of Albania and registered in the commercial companies register.

16) “Banking agency” – shall mean the organizational unit of a bank dependant on the branch of the bank, which carries out directly one or more banking and financial activities on behalf and for the account of the bank.

17) “Representative banking office” – shall mean the organizational unit operating in a country different from the Republic of Albania for the purposes of studying the market and public demands for banking products in that country. The representative banking office does not carry out banking or financial activities.

18) “Shares with voting rights” – shall mean the common shares of the issuer’s capital as well as any such other shares that carry the right to vote on any decision-making initiative in the general or extraordinary shareholder meeting of the issuer.

19) “Administrator of the bank or the branch of a foreign bank” – shall mean the individual who is:

- a) a member of the Steering Council or Audit Committee of the bank; or
- b) executive director; or
- c) director of the audit unit.

20) “Executive director” – shall mean an individual employed full time in a bank or branch of foreign bank with directing, executive and administrative functions.

21) “Person” – shall mean the individual, natural person, legal person and connected legal persons.

- 22) “Client”- shall mean a person who utilises banking and financial services.
- 23) “Minimum initial capital” – shall mean the minimum sum of the capital in money, to grant a license for the exercise of banking and financial activity in the Republic of Albania, determined by the Bank of Albania.
- 24) “Paid-in initial capital” – shall mean the capital paid by the shareholders of the bank to initiate its activity.
- 25) “Endowed initial capital”- shall mean the amount endowed and paid by the foreign bank of the initial minimum capital for the opening of the branch in the territory of the Republic of Albania.
- 26) “Regulatory capital” – shall mean the capital calculated for the purposes of banking supervision, including various categories of the capital and reserves, as well as other elements as may be defined from time to time from the Bank of Albania through its by-laws.
- 27) “Capital adequacy” – shall mean the difference between the regulatory capital of the bank and the sum of the items on and off the balance sheet, weighted against risk.
- 28) “Capital distribution” – shall mean:
- a) any dividend on the capital invested from the bank in physical or monetary assets or in any other property, as stipulated in the contract (percentage of the invested capital or remuneration in the form of salaries which does not have a negative bearing in the financial result of the bank);
  - b) any partial (change of participatory ratios between shareholders) or complete (departure of the shareholder from the participation in the bank) liquidation of the shareholder.
- 29) “Direct shareholder of the bank”- shall mean any person with participation in the capital of the bank.
- 30) “Indirect shareholder of the bank” – shall mean any person having participation in the capital of the legal person who is a direct shareholder in the capital of the bank.
- 31) “Non-banking financial entity” – shall mean any legal person licensed by the Bank of Albania to carry out one or more of the financial activities as defined in Article 54, paragraph 2 of this Law. The non-banking financial entity shall be prohibited to accept deposits or other repayable funds from the public.
- 32) “Risk”– shall mean the probability of financial loss resulting from the occurrence of an expected event.
- 33) “Risk management” – shall mean the entirety of methods and rules used by the bank or branch of foreign bank for identifying, monitoring, and controlling risk for the purposes of avoiding financial losses.

34) “Serious breach” – shall mean the actions or omissions resulting in considerable financial loss or insolvency for the bank or branch of the foreign bank, which have endangered the security and sustainability of the activity of the bank or branch of the foreign bank, or which cause a distortion or incompleteness of its financial statements.

35) “Commission” – shall mean a payment made by the bank or the branch of a foreign bank, for issuance and validity of the license in accordance with Article 27 of this Law.

36) **Abrogated**

37) **Abrogated**

38) “Compulsory liquidation” – shall be the process of placing the bank or branch of a foreign bank into possession and control of the chosen and appointed liquidator by the Bank of Albania, in cases of identification of the circumstances stipulated in Article 108 of this Law.

39) “Voluntary liquidation” – shall be the dissolution of the bank or branch of a foreign bank pursuant to the will of the shareholders of the bank or the will of the foreign bank for the branch of the foreign bank, pursuant to the conditions stipulated in Article 107 of this Law.

40) “Liquidator” – shall be an individual chosen and appointed by the Bank of Albania to liquidate the bank or branch of a foreign bank through the liquidation process, pursuant to the conditions stipulated in this Law.

41) “Banking Group”- shall be:

a) a group in which a bank, with the legal seat in the territory of the Republic of Albania, owns a qualified holding or controls one or more banks, or other financial institutions headquartered in or outside the territory of the Republic of Albania or;

b) a group in which a non-banking financial entity licensed by the Bank of Albania, has a qualified holding or controls a bank with the legal seat in the territory of the Republic of Albania, as well as when the total of the balance of this bank is larger than any other investments undertaken by this non-bank financial subject.

42) “Financial holding company” – shall be a legal person which:

a) has as main activity the acquisition or holding of ownership of qualified holdings or offering other financial services;

b) has qualified holding or controls a bank or other financial institutions.

c) does not directly carry out banking activity;

43) “Superordinate/predominant bank in a banking or financial group” – shall be:

a) the bank which owes a qualified holding or the control on other institutions which

make up the group.

b) the bank in the capital of which a non-bank financial subject, member of the group, holds a qualified holding or exercises control, when the total of the bank' balance is the same or larger than each of the other investments carried out by this non-bank financial subject.

44) “Credit Registry”- is the database for the purposes of processing the information reported by the banks or branches of foreign banks, or other subjects of this Law pursuant to by-laws of the Bank of Albania, and the distribution of this information according to Article 127 of this Law.

45) “Deposit Insurance Agency” – shall be the agency established pursuant to the Law nr.8873, date 29.03.2002 “On Deposit Insurance”.

46) “Electronic money institution”, shall mean a non-bank financial institutions that issues electronic money in accordance with the licence approved, conform to this law for this purpose, by the Bank of Albania.

47) “Electronic money” means electronically or magnetically-stored monetary value, which is issued upon receipt of funds to make payment transactions and represents a liability of the electronic money issuer to the receiver, who is a natural or legal person other than the electronic money issuer;

48) “A bank sale” shall mean the partial or full sale of its assets or shares

49) **abrogated**

50) “Parent undertaking” means the legal person that, in relation with another legal person, meets at least one of the following requirements:

a) has a majority of voting rights in that legal person;

b) has the right to appoint or remove a majority of the members of the directorate or the - governing/ supervisory body or other steering and/or supervisory bodies of this legal person and is, at the same time, a shareholder in or member of that legal person;

c) has the right to exercise a dominant influence over that legal person, pursuant to a contract entered into with that legal person in accordance with the company law or other legal grounds;

d) is a shareholder in or member of that legal person, and has the majority of voting rights, in accordance with a contract or another legal transaction concluded with other members or shareholders.

51) ‘Majority’ shall mean, in all cases, the simple majority of 50% + 1 vote.

**II.** The titles and chapters in this Law are used for orientation and reference only and shall have no bearing on the interpretation of the definitions or provisions of this Law.

**III.** For the purposes of this Law, words in singular may be interpreted as plural and vice-versa, whenever such interpretation is necessary in light of the content of the provision.

**IV.** The words in masculine include the feminine and vice-versa.

#### **Article 5**

##### **The right to carry out banking activities**

Banking activity in the Republic of Albania shall be carried out by:

- a) a bank with legal seat in the territory of the Republic of Albania, licensed by the Bank of Albania;
- b) a branch of a foreign bank licensed from the Bank of Albania.

#### **Article 6**

##### **Prohibitions on exercising of banking activities**

1. Subject to Article 5 of this Law, no subject shall be allowed to carry out banking activity in the Republic of Albania.
2. No subject shall be allowed to carry out banking activity in the territory of the Republic of Albania, without a license granted by the Bank of Albania.
3. No subject licensed by the Bank of Albania may carry out banking or financial activities outside those stipulated in the annexes to the license.
4. No subject may use the word “bank” or any other derivatives of it in the exercise of commercial or promotional activity, without a license granted by the Bank of Albania except where it is stipulated otherwise in the law or international agreements, or when it transpires from the content that the word “bank” or other derivative words of it do not relate to banking activity.
5. No subject, whose name is related to the word “bank” and words deriving from it, who has not received the initial approval from the Bank of Albania, may be registered in the register of commercial companies.

#### **Article 7**

##### **The language**

1. All the subjects of this Law shall use the Albanian language for the purposes of documentation and correspondence maintained in the Republic of Albania.
2. Banks and foreign bank branches operating in the Republic of Albania shall use the word ‘Bank’ in the Albanian language in their commercial name.

#### **Article 8**

##### **Information on the state of the banking and financial system**

The Bank of Albania, in the report which it submits periodically to the Assembly and the Council of Ministers according to the Law “On the Bank of Albania”, shall also include information on the recent situation and latest developments in the banking and financial system and recommend the necessary improvements to the legal and institutional framework of such system.

## **Article 9**

### **Prevention of money laundering and financing of terrorism**

The subjects of this Law, and the Bank of Albania shall implement the requirements emanating from the Law “On the prevention of money laundering” and Law “On measures against financing of terrorism” and other by-laws in force.

## **Article 10**

### **Legal form of the bank**

1. The bank shall be established as joint stock company with legal seat in the territory of the Republic of Albania, in accordance of the provisions of “On the commercial companies” Law, except when it is otherwise stipulated in this Law.
2. The bank may also be established using State capital in accordance with the provisions of this Law or through a separate law.
3. The branch of the foreign bank shall be registered in accordance with the provisions of the Law “On the official register and the formalities that must be observed by commercial companies”

## **Article 11**

### **Extension of the banking network**

1. A bank has the right to open branches or agencies in the territory of the Republic of Albania or abroad, provide cross-border services as well as open representative offices outside the territory of the Republic of Albania. The Bank of Albania sets out the conditions and criteria for opening a branch, bank agency or representative office or providing cross-border banking and/or financial services.
2. The foreign bank has the right to open one or more branches, or agencies inside the territory of the Republic of Albania, for which the Bank of Albania shall grant only one licence. For the purposes of supervision, such branches shall be considered as a single branch.

## **Article 12**

### **Share capital of the bank**

1. The shares in the capital of a bank shall be only nominative shares.

2. In every case the shares shall be prepaid in money.
3. The bank may not grant loans or issue guarantees directly or indirectly to a person for the acquisition of its own shares, or the shares of another company in which the bank owns 20% or more of the capital except when otherwise provided in this Law.
4. For the purposes of licensing, the bank shall comply with all the requirements relating to the capital as stipulated in Chapter 2 of this Law.

### **Article 13**

#### **Source of capital**

1. Each shareholder of the bank shall give information on the sources of the initial capital paid by him for the establishment of the bank, as well as any addition to the capital during the course of the bank's activity in accordance with criteria set out by the Bank of Albania.
2. Any payment of the initial capital and any addition in the structure of the capital of the bank shall be accompanied with the submission in the Bank of Albania of information relating to the source of the creation of such capital, as required below:
  - a) for legal persons:
    - (i) evidence of the source of the creation of funds submitted in a legally acceptable form (authorized auditor's report, annual accounting balance, gifts or other sources designated to be used for the purchase of the shares of the bank),
    - (ii) certificates by competent authorities which provide data on the balance of the company and compliance with taxation duties.
  - b) for natural persons:
    - (i) the evidence of the source of funds presented in a legally acceptable form (sale or purchase, gift, wages, monetary deposits in the bank or other evidence of the source of funds);
    - (ii) certificates of the competent state authorities evidencing payment of tax duties.
3. The methods and procedures for the submission of documentation shall be stipulated by the Bank of Albania through by-laws.

## **CHAPTER II**

### **THE LICENSING OF BANKS AND BRANCHES OF FOREIGN BANKS**

#### **Article 14**

##### **The licensing authority**

1. The Bank of Albania is the sole competent authority in charge of granting licenses to banks and branches of foreign banks to carry out banking and other financial activities as

defined in this Law.

2. The right to commence banking and financial activity is acquired only after the bank and the branch of the foreign bank has obtained a license from the Bank of Albania.

3. The Bank of Albania shall request information from any persons if, based on the circumstances of fact it finds that the person is carrying out banking and financial activities without a license, as well as notifies the competent authorities and requests from them close down these activities and take the necessary measures pursuant to the legislation in force. In the aforementioned case the person shall be obliged to give any such information, as required by the Bank of Albania.

## **Article 15**

### **The characteristics of the license**

1. The license is perpetual, non-transferable and not tradable.
2. The annex of the banking and financial activities, for which the bank or the branch of a foreign bank is licensed following compliance with the requirements set out in this Law and by-laws issued by the Bank of Albania, is an integral part of the license.

## **Article 16**

### **Phases of licensing**

The licensing of banks and branches of foreign banks shall include two phases:

- a) initial approval of the licence, and
- b) the granting of the licence.

## **Article 17**

### **Requirements relating to documentation**

1. The application to acquire a license for a bank shall be submitted in written to the Bank of Albania by the founding shareholders of the proposed bank, in a form defined by the by-laws of the Bank of Albania and shall be accompanied by:

- a) the founding act and draft statute;
- b) proposed name;
- c) address of legal seat;
- d) the sum of subscribed share capital of the bank and documentation evidencing the lawful source of contributions in the capital;
- e) documentation or official data from the competent authorities evidencing payment of taxation duties by the proposed shareholders;
- f) information on the qualification, reputation and experience in management of a

bank or another undertaking of a similar size as well as data on the progression of its activities, for at least two of the administrators who shall effectively direct the proposed bank. The proposed administrators shall accompany such information by a declaration that none of the disqualifying criteria of Article 41 of this Law applies to any of the future administrators.

g) the business plan for the first three years of the activity, containing amongst other things:

- (i) organizational structure;
- (ii) types of banking and financial activities to be carried out;
- (iii) foreseen financial statements, as well as
- (iv) underpinning principles of the business plan;
- (v) size and nature of activity of the proposed bank and the bank's planned position in the financial market.

h) name, permanent residence, temporary residence or address of legal seat, information on reputation and data on commercial or professional activity for the past seven years for each person proposed to own a qualifying holding, as well as the proposed sum. For the purposes of this provision, the proposed participation of the connected persons shall be aggregated in order to calculate the amount of the proposed available ownership.

i) all direct or indirect participation in the capital of the bank amounting to not less than 5 %, up to the last beneficiary as well as respective voting rights for such participations;

j) capital structure containing voting rights or rights of the shareholders on the capital;

k) information about any agreement or any other regulatory form by virtue of which control or influence in the decision-making process may be exercised in any other way.

l) accounts and annual report of the legal person, consolidated accounts and annual report as well as certified auditor's opinion on the annual accounts and consolidated annual accounts for the last three years.

2 The application to acquire a license for the branch of a foreign bank shall be submitted in written by the decision-making organs of the foreign bank, to the Bank of Albania in a form defined by its by-laws, and shall be accompanied by the following documents:

a) permission for exercising banking activity granted by the competent authorities of the country where the legal seat is located, as well as the list of activities for which a license has been acquired;

b) relevant documents evidencing the registration of the foreign bank as a legal person.

c) statute of the bank, including details of the accurate address of the legal seat, description of the activity, the amount of the capital, bank's management structures and its administrators;

d) information pertaining to the address in which the branch will be located;

e) ownership structure of the foreign bank;

f) accounts and annual report of the foreign bank, consolidated accounts and annual report as well as certified auditor's opinion on the annual accounts and consolidated accounts of the last three years of the activity of the bank.

- g) name of the supervisory authority and its consent to the opening of the branch of the foreign bank, as well as information on the performance of the principles and techniques of consolidated supervision;
- h) endowed sum of the initial minimum capital as determined by the Bank of Albania in its by-laws.
- i) information on deposit insurance scheme in accordance with the respective legislation;
- j) documentation as stipulated in letters (f), and (g) of paragraph 1 of this Article.

3. In cases where a foreign bank proposes to own qualifying holding in a bank the foreign bank must be authorized from the respective authorities to carry out acceptance and collection of deposits in money or other repayable funds in the foreign country where its legal seat is located. The foreign authorities in charge of the supervision of the banking activities of the foreign bank shall give in writing their consent to such ownership.

4. The application for the approval of representation office of a foreign bank shall be made in writing from the foreign bank. Such application shall be accompanied by documentations as stipulated in (a) – (f) of paragraph 2 of this Article.

5. The Bank of Albania shall have the right to request further information in addition to that stipulated above, through by-laws.

6. The Bank of Albania shall have the right to carry out independent checks in order to verify the accuracy of the information offered from the person applying for a license in accordance with dispositions of this Law. For such purpose, the Bank of Albania shall cooperate with relevant domestic authorities and foreign supervisory authorities.

## **Article 18**

### **Capital requirements**

1. For the purposes of acquiring a license, a bank or a branch of a foreign bank, must deposit a minimum initial capital. The Bank of Albania determines through by-laws the amount of the minimum initial capital, to be deposited in money, in order to carry out banking activity as well as changes of such amount from time to time.

2. The minimum initial capital required for the purposes of obtaining a license to carry out banking activity shall be deposited in the Bank of Albania in a deposits account, in the form of a guarantee bearing no interest and shall be frozen until the acquisition of the license. The depositing shall be carried out through a giro in the account.

3. The minimal initial capital may not contain loans from the public, credit from the bank or money paid in advance from third parties and subjects.

## **Article 19**

### **Initial approval of licence or its refusal**

1. The Bank of Albania shall, within three months, from the date of the acceptance of the

application for a license, grant or refuse the initial approval for the licence and shall notify the applicant of such decision in writing. For purposes of this paragraph, the date of acceptance of the application for license shall be the date when the applicant has met all the requirements of this Law and those of other by-laws implementing this Law.

2 The Bank of Albania shall give its initial approval for the licence only after it has been satisfied that:

- a) the bank complies with the requirements of this Law;
- b) the shareholders of the bank have good reputation, lawful source of their contribution in the capital, lawful registered and regulated activities, have the financial potential to contribute additional funds, in cases where the capital falls beneath the required minimum threshold set by the Bank of Albania or to effect necessary financing for the continuation of the banks activity.
- c) qualifications, experience and reputation of the banks or the branch of the foreign banks administrators as well as those of the shareholders with qualifying holding are consistent with the business plan submitted for licensing purposes;
- d) ~~abrogated.~~
- e) operational and control structures, including banks or branches of a foreign bank procedures and policies, are consistent with the purpose and the performance of the activities to their proposed extent.
- f) the submitted business plan is realistic and competitive in the market and the expected financial condition of the bank or the branch of the foreign bank is satisfactory.
- g) the foreign bank applying for a license to open a branch is supervised on consolidated and sustainable basis from the respective foreign supervisory authorities.
- h) the bank or the branch of a foreign bank has no less than two executive directors.

3 The Bank of Albania shall refuse initial approval of a license for a bank or a branch of a foreign bank when:

- a) the requirements of paragraph 2 of this Article are not met;
- b) at least one of the directors or shareholders with qualifying holding has been subject to bankruptcy procedures;
- c) details pertaining to the identity of the shareholders with qualifying holding have not been produced;
- d) it is proved that at least one of its shareholder:
  - (i) is under criminal investigation or has been convicted by court for committing a serious criminal offence.
  - (ii) is subject to a decision of a court barring him from the exercise of such activities;
  - (iii) is under investigation or has been convicted by court for committing a criminal offence pertaining to money laundering or financing of terrorism.
- e) fails to submit additional information requested by the Bank of Albania in accordance with paragraph 5 of Article 17 of this Law.
- f) is not in possession of the minimum initial capital amount requested by the Bank of Albania for the exercise of banking activity.

4. In case of refusal of the initial approval for the licence, the Bank of Albania shall, in its decision, describe the reasons for such refusal.

5. The Bank of Albania shall have the right to determine, in the decision for the initial approval for the license, that additional requirements be met by the bank or the branch of the foreign bank for the purposes of acquiring a license and initiating its activities, in addition to those defined in Article 20 of this Law.

6. The Bank of Albania shall abate the consideration of the documentation submitted, for purposes of the initial approval for the license, in cases where the applicant has not complied with the requirement to submit documentations in accordance with this Law and by-laws issued by the Bank of Albania, within 12 months from the submission of the application form.

## **Article 20**

### **The license**

1. The bank or the branch of a foreign bank having acquired an approval for the provisional license shall meet the following requirements within 12 months of such approval:

- a) registers in the court as legal person, accompanied by the founding act and statute of the bank, which is initially approved by the Bank of Albania;
- b) pays the initial minimum capital by the banks shareholders or transfers the amount of the initial minimum capital endowed to the branch of the foreign bank, for the commencement of the activity;
- c) employs directors;
- d) purchases or hires the premises where the activity will be carried out;
- e) appoints the certified auditors in accordance with Article 48 of this Law;
- f) secures and protects the banks premises and equipments used for its activity;
- g) designs administrative and accounting procedures and has in place suitable procedures of internal audit.
- h) creates the technical and organizational conditions for the exercise of banking and financial activity;
- i) evidences submission of the application to the Deposit Insurance Agency for the acquisition of the certificate of deposit insurance.

2. The Bank of Albania shall grant a license to commence banking activities in cases where requirements of paragraph 1 of this article, as well the additional conditions pursuant to Article 19, paragraph 5 of this Law are met.

3. The Bank of Albania shall have the right to set additional requirement and criteria for the acquisition of the license, at any time before the approval of such license.

4. The Bank of Albania shall verify the compliance with the requirements for the commencement of the activity and decide to refuse or grant the license.

5. Without prejudice to other requirements set out in this Law the Bank of Albania shall

not license a bank or a branch of a foreign bank which is not in possession of the minimal capital amount to be deposited in money for the exercise of banking activity, as determined in by-laws of the Bank of Albania.

6. The Bank of Albania shall repeal the approval of the provisional license to the extent that the bank or the branch of the foreign bank does not meet the requirements for the acquisition for a license for the commencement of its activities within 12 months from the initial approval for the license. The Bank of Albania has the right to extend this deadline no longer than six months from the date of its expiry.

7. The licensed bank or the licensed branch of the foreign bank shall notify in writing the Bank of Albania and the Deposit Insurance Agency of the date of the commencement of the activity. The bank shall commence its activity no later than 6 months after the acquisition of the license.

## **Article 21**

### **The announcement and publication of the decision for granting license**

1. The Bank of Albania shall announce the decision for granting a license.
2. The decision shall be published in the Official Journal of the Republic of Albania and the Official Bulletin of the Bank of Albania, as well as in one or more of the national newspapers.

## **Article 22**

### **Requirement for deposit insurance**

A bank or branch of a foreign bank may not carry out banking activity without acquiring the certificate of deposit insurance, in accordance with the provisions of the Law “On Deposits Insurance”.

## **Article 23**

### **Additional activities**

1. In exercising its activity the bank or the branch of a foreign bank shall have the right to request that the Bank of Albania permits it to carry out other activities not included in the annex of the granted license in accordance with Article 20 of this Law.
2. Notwithstanding paragraph 1, the branch of the foreign bank, may not carry out activities for which the foreign bank has not been licensed to.
3. The Bank of Albania shall approve the carrying out of additional activities, to the extent that it finds that such activity does not pose a threat to financial stability of the bank or the branch of the foreign bank and that the necessary administrative and technical

requirements for its safe exercise are met.

4. In case the application is refused, the Bank of Albania shall give in writing the reasons for such refusal.

## Article 24

### Prior approvals

1. The bank may not do any of the following without the prior approval in writing from the Bank of Albania:

- a) change the name;
- b) change the statute;
- c) finalize agreements with third parties for the exercise of the functions and duties for the administration and management of the bank. The Bank of Albania determines through its by-laws the criteria for entering into the mentioned agreements, as well as the functions and duties the exercise of which cannot be delegated to third parties through any agreement.
- d) carry out financial activities which are not included in the annex to the granted license;
- e) increase the capital through non-liquid assets;
- f) repurchase its own shares or those of its connected persons, directly or through another person, by granting credit or issuing guarantees;
- g) decrease the capital;
- h) appoint one or more administrators;
- i) open a branch, subsidiary or representative office outside the territory of the Republic of Albania;
- j) invest over 15% of its regulatory capital in the capital of a legal person who does not carry out banking activity;
- k) transfer ownership of a qualifying holding or the control of the bank to third parties;
- l) increase the percentage of a shareholder with qualifying holding exceeding 20, 33 or 50% of the bank's capital or its voting rights or to such degree that the bank becomes its subsidiary;
- m) distribute its capital;
- n) open a branch or agency within the territory of the Republic of Albania;
- o) be legally reorganized through merger, separation or any other similar form.

2. The branch of the foreign bank shall acquire the approval of the Bank of Albania to carry out the following activities:

- a) the exercise of financial activities not included in the annex of the licence;
- b) appointment of one or more of the directors;
- c) the opening of branches and agencies within the territory of the Republic of Albania.

3. The Bank of Albania grants or refuses to grant the prior approval, as stipulated in paragraphs 1 and 2 above, within 3 months from the adequate submission of the request, in

accordance with the documentation as defined though by-laws.

4. The bank or the branch of the foreign bank, after acquiring the approval of the Bank of Albania, shall require the judicial approval or shall register in the commercial register, accordingly, the legal facts emanating from the exercise of the activity pursuant to this Law which require the initial approval of the Bank of Albania. The Bank of Albania upon ascertaining the breach of such condition may impose one or more of the penalizing measures enlisted in Article 89 of this Law.

## **Article 25**

### **Change of qualifying holding**

1. A person who requires to change through purchase, sale or transfer his qualifying holding in a bank, shall require the initial approval of the Bank of Albania.

2. The person requiring to own a qualifying holding of the shares of the bank, shall submit a request to the Bank of Albania for the initial approval, pursuant to the approval of such request by the Shareholders' Assembly.

3. The Bank of Albania shall approve the changes in the qualifying holding, pursuant to paragraph 1, when the conditions stipulated in Chapter II of this Law are met.

4. The Bank of Albania shall determine conditions and time-limits for the approval stipulated in paragraph 3, which shall be met by a shareholder with qualifying holding in a bank, for the approval stipulated in paragraph 3 to be valid.

5. The Bank of Albania shall refuse the initial approval of the transfer of the qualifying holding if, based on the information it has received, it concludes that:

- a) the conditions for the shareholders of the bank stipulated in Chapter II of this Law are not satisfied;
- b) the qualifications, experience and reputation of the proposed new shareholder of the bank are not suitable for the banking and financial plan, and may negatively impact risk management in the bank;
- c) the activity and operations carried out by the new proposed shareholders in the bank hinder the supervisory process;
- d) the approval of the new shareholders with qualifying holding in the proposed bank would threaten the conditions for free competition in the market, according to the assessment of the competent authority pursuant to the law in force;
- e) the approval of the transfer of influential holding would negatively impact in the implementation of the monetary policy and foreign exchange in the Republic of Albania.

6. If a person holds a qualifying holding in the bank without the prior approval of the Bank of Albania, the action resulting in such occurrence shall be deemed null and void.

7. Nobody can be a direct or indirect shareholder in a bank if that person does not have the moral reputation required by this Law or by-laws of the Bank of Albania, or who is

charged or convicted at the time of the licensing of the bank or branch of a foreign bank.

8. If the person, following the licensing or the approval of the Bank of Albania as a shareholder, does not meet any longer the requirements of this Law or by-laws on moral reputation, or is convicted, the Bank of Albania may order the transfer of the ownership of the person's proprietary rights on the shares to third parties who satisfy the criteria.

## **Article 26**

### **Obligation for notification**

1. The bank or the branch of the foreign bank shall immediately notify the Bank of Albania when:

- a) the liquidity or solvency of a bank or branch of a foreign bank is threatened, as defined in the by-laws of the Bank of Albania;
- b) risk positions reach maximum allowed exposure limits, as defined in the by-laws of the Bank of Albania;
- c) it is assessed that there is justifiable cause for termination or suspension of any allowed financial activities;
- d) the financial position of the bank has changed to the extent that the bank does not possess any longer the regulatory capital or does no longer reach the minimum capital adequacy as defined in by-laws of the Bank of Albania or when the branch of the foreign bank has not complied with the criteria of investment set out in Article 59, paragraph 7 and 8 of this Law.
- e) the regulatory capital of the bank falls beneath the minimum initial capital required for the commencement of banking activities;
- f) the foreign bank or its branches are rendered subject of supervisory actions for serious breaches, as defined in Article 80 of this Law, from the competent authorities of the country of origin;
- g) it is assessed that there is cause for the revocation of the license.

2. The bank or the branch of the foreign bank notifies the Bank of Albania within 30 days for:

- a) the increase of capital of the bank or the foreign bank in the case of the branch of the foreign bank;
- b) the changes on the structure of the bank's capital or the foreign bank's capital in the case of a foreign bank;
- c) investments carrying high risk as defined in the by-laws of the Bank of Albania;
- d) changes in the organizational structure;
- e) changes of legal seat and its address;
- f) investments of the bank in the capital of another legal person;
- g) dismissal of administrators.

3. The bank or foreign bank branch notifies the Bank of Albania before providing banking and/or financial cross-border services. The Bank of Albania may refuse granting authorisation to the bank to provide cross-border services conform to criteria set out in its by-laws acts.

## **Article 27**

### **Commissions for licensing**

1. The Bank of Albania shall define through by-laws, commissions for:
  - a) processing the application for licensing;
  - b) granting of the license;
  - c) validity of the license.
2. The commission stipulated in letters (a) of paragraph 1 shall be paid following the submission of the request for licence pursuant to Article 19, whereas the commission stipulated in letter (b) of paragraph 1, shall be paid with following the submission of the documents for the purposes of obtaining a licence pursuant to Article 20. These commissions shall receive a one-off payment. The commission stipulated in letter (c) shall be paid on an annual basis, within 30 days from the commencement of the calendar year.
3. These commissions shall not be reimbursed.

## **Article 28**

### **Revocation of the license**

1. The license of the bank or the branch of a foreign bank in the territory of the Republic of Albania shall be revoked only by decision of the Bank of Albania, where:
  - a) it is so requested by the licensed bank or the foreign bank on behalf of the branch of the foreign bank;
  - b) there are breaches of this Law or by-laws issued by the Bank of Albania, which may lead to or cause the occurrence one of the events stipulated in Articles 22, 78 and 80 of this Law;
  - c) the bank or the branch of the foreign bank does not possess and is not able to provide sufficient own funds, and as a result, is no longer able to be relied on to fulfil its obligations towards its creditors and particularly no longer provides security for assets entrusted to it;
  - d) the bank or branch of a foreign bank does not comply with the conditions, upon which it was licensed;
  - e) the license was acquired on the basis false information, notwithstanding whether such information was given by or pertaining to the applicant, including details of qualifications, experience or reputation of the proposed directors and shareholders with qualifying holding or other substantial irregularities pertaining to the application for licensing;
  - f) the bank or the branch of a foreign bank has not commenced its activity within 6 months from the grant of the license or has suspended for longer than 6 months acceptance and collection of banking deposits, except for cases where such suspension is decided by the Bank of Albania;
  - g) the bank has carried out operations stipulated in Article 24, paragraph 1, (i) of this Law, without the initial approval of the Bank of Albania.
  - h) a transfer of the control of the bank has taken place without the initial approval of

the Bank of Albania;

- i) the bank or the branch of a foreign bank hinders through its acts or omissions the exercise of supervisory functions of the Bank of Albania;
- j) the bank or the branch of a foreign bank is in breach of orders for the abatement of unlawful activities as well as specific performance for rectification of breaches of laws and by-laws;
- k) the bank has ceased being a legal person;
- l) the Bank of Albania decides the placement of the bank or the branch of a foreign bank in liquidation process;
- m) it is found or there is reliable evidence to show that the shareholders or administrators of the bank or administrators of the branch of the foreign bank are involved in illegal activities, used deception or have personally benefited in an unlawful way resulting in considerable damages to the bank;

2 In cases stipulated in letter (a) in paragraph 1 of this Article, the Bank of Albania shall decide upon the revocation of the license of the bank or the branch of the foreign bank within 30 days from the receipt in writing of the request from the bank or the branch of the foreign bank.

3 The Bank of Albania shall revoke a license granted to the branch of a foreign bank even in cases where the foreign bank has lost the right to or has no right to carry out banking activities in the country where it has its legal seat.

4 The decision of the Bank of Albania for the revocation of the license shall be immediately communicated to the bank or the branch of the foreign bank in writing, containing reasons for the revocation. Such decision is also communicated to the Deposit Insurance Agency.

5 The bank or the branch of the foreign bank shall be prohibited to carry out banking or financial activities or shall be obliged to liquidate as soon as possible its assets; terminate its contractual relationships on non-term monetary deposits and repay its liabilities, once the decision for the revocation of the license has entered into force. During the time the bank or the branch of the foreign bank shall continue to be subject to the provisions of this Law, as if it were licensed.

## **Article 29**

### **The announcement and publication of the decision to revoke the license**

- 1. The Bank of Albania shall announce the decision to revoke the license.
- 2. The decision shall be published in the Official Journal of the Republic of Albania, the Official Bulletin of the Bank of Albania as well as in one or more national newspapers.

## **Article 29/1**

### **Special method to establish a local bank through transforming a foreign bank branch operating in the Republic of Albania**

1. The foreign bank, which conducts banking and financial activity through a branch in the territory of the Republic of Albania, in compliance with the licence granted by the Bank of Albania, may transform its branch into a subsidiary in the form of a joint stock company through registering the donated capital in shares underwritten by the foreign bank.
2. Transformation as described above of a foreign branch into a subsidiary/local bank takes place upon request by the foreign bank, or when the Bank of Albania considers it as necessary for systemic risk management reasons. When transformation is requested by a foreign bank, the request shall be subject to approval by the Bank of Albania, which may refuse approval when it deems that the transformation harms the national economy or state interests and deteriorates the financial situation or compliance with supervisory norms.
3. The transformation process as described above of the foreign branch into a subsidiary/local bank is compulsory when determined to be necessary by a decision of the Bank of Albania for systemic risk management purposes.
4. In the case of transforming the foreign bank branch into a subsidiary the subsidiary's capital shall be considered to be the algebraic sum of the following balance sheet elements, certified by an accounting expert:
  - a) donated capital, paid;
  - b) reserves;
  - c) revaluation differences;
  - d) undistributed profit;
  - e) profit/loss of the relevant year;
5. In case of transformation, the bank's regulatory capital or parts of it shall not fall below the initial minimum capital required for the licensing of a bank.
6. The transformation of a foreign bank branch into a subsidiary is performed within 3 months from the approval of the foreign bank's request by the Bank of Albania and within 6 months when the transformation has been specifically requested by a decision of the Bank of Albania. This deadline may be extended by a decision of the Bank of Albania. In case of refusal of the transformation or failure to comply with the deadline for completing the transformation, the Bank of Albania may undertake supervisory measures as stipulated in this law, and may revoke the foreign bank branch's licence and put it under compulsory liquidation.
7. The process of transforming the foreign bank branch into a bank/subsidiary by request of the bank itself enters into force upon registration, at the National Registration Centre, of the transformation decision taken by the general assembly or any other competent body of

the parent bank, together with the decision of the Bank of Albania on the transformation approval.

8. The process of transforming the foreign bank branch into a bank/subsidiary by a decision of the Bank of Albania enters into force upon the notification of this decision to the legal representatives of the foreign bank branch and/or parent bank, or in the date specified by the latter in the transformation decision. The National Registration Centre is notified on this decision, which may be published after the completion of transformation.

9. Registration of the transformation of the bank at the National Registration Centre provides for the following:

- a) the parent bank of the foreign bank branch that is transformed may participate in the equity capital of the subsidiary according to the conditions stipulated in this law;
- b) The rights of the parent bank and third parties toward the foreign bank branch that is transformed, may continue to be applied on the subsidiary as well.

## **Article 29/2**

### **The transformation procedure**

1. The Headquarters of the foreign bank branch that is transformed, submits a detailed report to the Bank of Albania, explaining the legal and economic grounds of the proposed transformation and/or relevant reasons. The report shall contain specific difficulties identified in assessing the transformation, and shall describe the projected effects of transformation on regulatory and supervisory norms, as well as on employees of the foreign bank branch.

2. The decision on the transformation of the foreign bank branch, when the transformation is requested by the foreign bank, shall be taken by the general assembly or any other competent body of the parent bank. If, as a result of the transformation, changes occur in the specific rights and liabilities of shareholders, the validity of the transformation decision is subject to approval by the concerned shareholders, according to the relevant commercial legislation.

3. Regarding the protection of creditors, for subjects holding special rights and those entitled to interests, who contest the transformation, Articles 221, 222, and 223 of the law 'On commercial entities' are applied.

4. Regarding the legal responsibilities of the Headquarters members and other administrators of the foreign bank branch being transformed, concerning the damages caused by infringing their duties during the transformation, the dispositions of Article 224 of the law 'On commercial companies' shall apply.

## **Article 29/3**

## Legal effects of the transformation

1. The transformation does not bring consequences on the claims and liabilities of the foreign bank branch to third parties. The foreign bank subsidiary inherits all the claims and liabilities stemming from the operations of the foreign bank branch undergoing transformation, including the total deposits. All claims and liabilities to third parties of the foreign bank branch undergoing transformation before the transformation process enters into force, remain in force for the subsidiary according to the arrangements defined in the acts or agreements with these parties.
2. Claims and liabilities according to paragraph 1 of this Article, when transformation is deemed as necessary by the Bank of Albania, may be transferred without prior consent from depositors, other creditors, shareholders with special rights, or other third parties.
3. Upon entry into force of transformation, all financial and physical assets owned or administered by the foreign bank branch that is transformed continue to be owned or administered by the established subsidiary.
4. For tax registration purposes, the established subsidiary maintains the same tax ID code (NIPT code in the Albanian case) as the foreign bank branch that is transformed.
5. The subsidiary established as a result of the transformation of the foreign bank branch shall not be subject to a new licensing procedure by the Bank of Albania, however, the Bank of Albania verifies the legal and sublegal conditions approving or refusing the transformation of the foreign bank branch into a subsidiary. If the Bank of Albania approves the transformation, the subsidiary inherits the licence of the transformed foreign bank branch. In this case, the Bank of Albania delivers the new licence to the subsidiary reflecting the change of designation from foreign bank branch to subsidiary.
6. The deposits gathered by the foreign bank branch transformed into a subsidiary remain insured according to the stipulations of the law 'On deposit insurance'. With this transformation, the subsidiary is part of the deposit insurance scheme according to the precepts of the law 'On deposit insurance', maintaining all relations the foreign bank branch had.
7. After completing the transformation process the subsidiary is registered in the commercial register administered by the National Registration Centre, while the foreign bank branch is removed from that register.
8. The subsidiary is supervised by the Bank of Albania in accordance with the precepts of this law and regulations derived from it. The subsidiary must comply with all

the supervisory norms and requirements stipulated in this law and regulations stemming from it.

**CHAPTER III**  
**ORGANIZATION, MANAGEMENT AND AUDIT OF THE BANK AND BRANCH**  
**OF THE FOREIGN BANK**

**Article 30**

**Organization**

1. The bank, organized as joint stock company, shall have no Supervisory Council. Article 96, first sentence of Article 97 and Subsection II of Section IV of the Law “On commercial companies” shall not apply to the banks.
2. For the purposes of this Law, in Article 98 of the Law “On commercial companies”, the term “Supervisory Council” shall be substituted by the term “Shareholders' Assembly”. In the first paragraph of clause 4 of Article 136 of the Law “On Commercial Companies”, the term “Supervisory Council” shall be substituted by the term “Steering Council”, and all other responsibilities of this council stipulated in the Law “On commercial companies” shall be the responsibilities of the Steering Council.

**Article 31**

**Independence of the bank**

The bank and the branch of a foreign bank is administered and governed based on free market and fair competition principles. No subject or public person may interfere without authorization to influence the administration or the governing structures of the bank or branch of a foreign bank, except when complying with by-laws of the Bank of Albania, execution of orders from the judiciary organs or when it is so stipulated in the Law.

**Article 32**

**The direction of the bank**

1. The bank shall be directed by the Steering Council and the Directorate.
2. The organs of the bank shall be the:
  - a) Shareholders Assembly;
  - b) Steering Council
  - c) Directorate;
  - d) Audit Committee
3. The powers of the organs of the bank shall be determined in this Law and in the

statute.

4. The branch of the foreign bank shall be directed by the Directorate. The other organs shall be the same with those of the foreign bank.

### **Article 33**

#### **Internal by-laws**

1. Banks activity shall be directed and regulated by internal by-laws approved by the steering organs, in accordance with the provisions of this Law and its statute and shall determine:

- a) organizational, administrative and functional structure, including its functional and administrative units and reporting and monitoring relationships;
- b) duties of each director and units that he directs and supervises;
- c) the functions of the internal audit unit and other internal permanent committees;
- d) boundaries to the powers of the directors, other banks employees and any other person to be acting in the name and on behalf of the bank.

2. The internal by-laws of the branch of the foreign bank shall be issued in accordance with the regulatory acts of the foreign bank as long as the latter do not contradict with the Albanian legislation in force.

### **Article 34**

#### **Emblem and seal**

The bank shall have its own emblem and seal with respective marks.

### **Article 35**

#### **Composition of the Steering Council**

1. The Steering Council shall be the decision-making and supervisory organ.
2. The Steering Council is comprised of an odd number of members, not less than 5 and not more than 9 members. The Steering Council elects from its members one Chairman and one Deputy Chairman who shall preside over and steer the debate during the meetings for the Steering Council.
3. Steering Council members shall be appointed by the Shareholders Assembly for a four-year term with the right to re-election for the same term duration, without limitation. The original members of the Steering Council shall be nominated in the Statute.
4. The majority of the members of the Steering Council shall be composed of individuals that at the time of their election and throughout their mandate, are not connected through private interests, pursuant to Article 44, paragraph 2 of this Law, with the bank, shareholders that control the bank or its executive directors.

5. The members of Steering Council may be dismissed at any time by the ordinary Shareholders Assembly.
6. The appointment of the members of the Steering Council, in case of merger or separation, shall be done by the Shareholders Assembly in an extraordinary meeting.
7. Members of Directorate may be members of the Steering Council, provided that their total number does not constitute the majority of the total number of members of Steering Council.
8. The Chairman and Deputy Chairman of the Steering Council may not simultaneously be members of the Directorate.
9. The Steering Council may until the next meeting of the Shareholders' Assembly, elect temporary members from the approved administrators of the Bank of Albania, in the event of a vacancy caused by the death or resignation of one or more members of it. The meeting of the Steering Council shall validly take place if more than half of the appointed members of the Steering Council are present. The decision in such case shall be taken by a simple majority of votes of the members present in the meeting.
10. In the event stipulated in paragraph 9, the Steering Council or the Directorate shall immediately call the Shareholders Assembly.
11. Remuneration of the members of the Steering Council shall be determined by the Shareholders Assembly decision.

### **Article 36**

#### **Meetings of the Steering Council**

1. The Steering Council may not take valid decisions without the presence of at least half of its members.
2. The decisions shall be taken by a simple majority of votes of the members present, except in cases where the Statute of the bank stipulates for a larger majority.
3. The vote of the Chairman shall be definite in cases of a tie voting, if it is not otherwise stipulated in the Statute.

### **Article 37**

#### **Powers of the Steering Council**

1. Members of the Steering Council, while discharging their duties shall comply with the highest ethical standards and act upon sufficient and adequate information, in good faith, with the due care and responsibility, fully committed to their responsibilities, in the best interest of the safety and sustainability of the banking and financial activity, of the clients and their shareholders.

2. The main responsibilities of the Steering Council shall include amongst others:
  - a) approving and controlling the implementation of the policies and strategies of the bank in connection with the business plan, risk management, annual budget;
  - b) setting out long-term objectives of the bank and monitoring their realization;
  - c) monitoring the effectiveness of management practices in the bank and effecting appropriate changes for the purposes of improving such practices;
  - d) establishing committees in cases where it becomes necessary for dealing with cases of special interest to the bank, clearly defining the duration of their mandate, their composition and their working procedures;
  - e) setting out the conditions and standards for the selection, remuneration, appraisal and removal of the directors of the bank, as well as monitoring the practices for the substitution of the staff;
  - f) monitoring and solving potential conflicts of interests of the directors, members of the Steering Council and shareholders, including the potential conflict of interests rising out of the misuse of banks assets and transactions with connected persons;
  - g) taking the necessary and adequate measures for ensuring the integrity of the financial and accounting system of the bank, including the independent auditing of the bank, and ensuring the existence of the appropriate systems of audit especially with regard to risk management, operational and financial system of the bank, as well as ensuring compliance with the law and best practices in the banking system;
  - h) monitoring and supervising implementation of legal and regulatory requirements and of the best practices in banking system;
  - i) supervising the process of disclosure of information and communication with the public.
3. The members of the Steering Council, when discharging their duties, shall request or receive appropriate, timely and adequate information.
4. A member of the Steering Council may delegate his competences to other third parties, but shall bear the responsibility for his decisions.

### **Article 38**

#### **Audit Committee**

1. The Audit Committee is comprised of three members who are appointed by the Shareholders' Assembly for a 4 year period, with the right to re-election.
2. The members of the Audit Committee shall be individuals with no less than 3 years of experience in the fields of accounting or auditing.
3. The Audit Committee shall have the following duties:
  - a) audits and supervises accounting procedures and internal control of the bank, including the procedures defined by the Bank of Albania, and supervises the implementation of these procedures as well as audits the bank accounts and respective registrations;
  - b) considers internal audit reports and monitors the way conclusions from such reports

are dealt with;

- c) proposes the statutory auditor and realizes the communication between him and the internal audit of the bank;
- d) evaluates the financial situation of the bank based on the report of the statutory auditor;
- e) controls compliance of the activity of the bank with laws and by-laws and notifies the Steering Council of the bank about the conclusions;
- f) gives an opinion to the Steering Council of the bank in relation to issues, for which the latter has requested such an opinion;
- g) approves the financial reports and statements prepared by the bank and which the bank intends to publish.

4. The Audit Committee holds general meetings no less than three times a year, as well as extraordinary meetings when is called by the Steering Council of the bank. The decisions shall be taken by the majority votes of all members. Abstaining is not allowed. Members of the Audit Committee may not be employees or executive directors of a bank. Members of the Audit Committee may be members of the Steering Council

5. The Audit Committee, in exercising its functions, may be assisted by external experts chosen by it.

6. The Shareholders Assembly of the bank shall decide on remuneration of the members of the Audit Committee.

7. The Audit Committee reports to the Steering Council and assists the latter in the banks decision-making and supervision process.

### **Article 39**

#### **Directorate and the executive directors**

1. The activity of the bank and of the branch of a foreign bank shall be directed and organized continuously by its Directorate.

2. The Directorate shall be comprised of one or more executive directors.

### **Article 40**

#### **Qualifying criteria for administrators**

In order to exercise his functions as an administrator of the bank or branch of foreign bank, an individual must:

- a) hold a university degree, as a general rule, in law or economics;
- b) have good reputation and;
- c) meet other criteria as defined in the by-laws of the Bank of Albania in relation to qualification, experience in the banking and financial field as well as experience in management.

## **Article 41**

### **Disqualifying criteria for the administrators**

An individual shall not be suitable for the position of the administrator or shall be released from holding such position by a decision of Shareholders Assembly of the bank or of foreign bank in case of the branch of the foreign bank, or of Directors Council, accordingly, where he:

- a) is an administrator of another commercial company in the Republic of Albania except for when such a commercial company is a connected person to him;
- b) is the direct or indirect owner of more than 5% of the shares with voting rights of another bank or related person;
- c) acts or has acted, at any time for the past 5 years, as administrator of a bank, which has been subject to compulsory liquidation procedures pursuant to the provisions of this Law;
- d) acts or has acted, at any time during the past 12 months, as a member of the Supervisory Council of the Bank of Albania;
- e) is an employee of the Bank of Albania;
- f) is under criminal investigation or found guilty by the court of an offence punishable in law by imprisonment;
- g) has been subject to bankruptcy procedures and has not yet been relieved of his past obligations;
- h) has been penalized by the Bank of Albania in the past 5 years for a serious breach of this Law or for carrying out activities for which there was no license in force by the Bank of Albania;
- i) is an employee or partner of a commercial company which acts as statutory auditor or financial adviser of a bank or branch of a foreign bank operating in the territory of the Republic of Albania.
- j) his liabilities exceed his claims and his investments in the bank, or where he is connected with legal persons whose liabilities towards the bank exceed their claims and investments in the bank.
- k) is a creditor of the bank and the value of his overall credit to the bank is larger than one quarter of the bank's assets.

## **Article 42**

### **Initial approval of administrators**

1. The position of the administrator shall be occupied by individuals who have been initially approved by the Bank of Albania.
2. The application for such approval shall be accompanied by documents evidencing compliance with the criteria set out in Article 40 of this Law and by-laws of the Bank of Albania.

## **Article 43**

### **Dismissal of administrators**

The Bank of Albania shall have the right to order the bank or the branch of the foreign

bank to dismiss an administrator where:

- a) it finds that the administrator has no adequate moral or professional integrity to serve as a director;
- b) his initial approval was based upon forged documents;
- c) the administrator has breached provisions of this Law or by-laws of the Bank of Albania.

#### **Article 44**

##### **Prevention and resolution of conflicts of interests**

1. Every administrator, upon his election and appointment, regardless of whether he takes part in any decision-making, shall initially declare in writing to the Steering Council all his private interests as stipulated in paragraph 2 of this Article.

2. Private interests of the administrator shall be interests based on or deriving from:

- a) relationships based on wealth or commerce, direct or indirect of any nature;
- b) any other juridical-civil relationship;
- c) gifts, promises, favours, preferential treatments;
- d) negotiations for potential employment or any other form of relationship constituting a private interest for the director in the future, after leaving the position as administrator carried out by him whilst in the position of the administrator of the bank;
- e) engagement in private activities with the view to profit or any other activities which generate income;
- f) family or cohabitation relationship.

3. Declaration of private interest from the administrator shall be made in writing to the Steering Council of the bank from time to time, but not less than once a year.

4. The administrator may not take part in discussions or vote on decisions in relation to contracts or juridical actions which relate to matters in which the administrator has a private interest. The presence of the administrator who has private interest in the meetings of the respective organ of the bank where subject matters that relate to his private interest are discussed, shall not count for the purpose of the necessary *quorum* for the decisions on such subject.

5. The Steering Council shall be responsible for the approval of the internal by-laws which determine the basic methods of prevention and efficient resolution of the conflict of interest. The Steering Council may set up and authorize *ad hoc* committees composed of non- executive members of this Council, who would be responsible for dealing appropriately, on a case by case basis, with the conflict of interests in the bank.

6. The following measures shall be taken where an administrator fails to declare such conflicts of interest as set out in this Article or where the contract or juridical act is related to the conditions of the existence of such conflict of interest:

- a) the steering organs of the bank or any shareholders shall request to the court of the appropriate jurisdiction to declare the contract or the juridical act void;

- b) the Bank of Albania shall have the right to suspend the administrator for a period of up to 1 year;
- c) the Bank of Albania shall request the permanent removal of the administrator.

## **Article 45**

### **Internal audit system**

1. The bank or the branch of a foreign bank shall organize an internal audit system for the purposes of monitoring the implementation of internal policies and procedures, evaluation of effectiveness of banking activity and monitoring compliance with law and by-laws.
2. The objective of the internal audit shall be to identify the exposure of the bank or the branch of the foreign bank to type of risks, as well as measuring, administering and monitoring their levels.
3. Internal audit system of the bank or branch of the foreign bank shall consist of the entirety of procedures, rules and structures which are part of it.
4. The activity of internal audit shall be an integral part of the daily activity of the bank or the branch of the foreign bank and shall include audit within each of its organizational units, physical checks of assets and information, evaluation of compliance, checks on the system of verification and reconciliation of financial information as well as periodical review of the effectiveness of previous checks.

## **Article 46**

### **Internal audit unit**

1. The bank or the branch of a foreign bank shall set up an internal audit unit, as part of the internal control system with the responsibility for the provision of an effective control over the implementation of policies, regulations and procedures approved by the Steering Council or the Directorate in case of the branch of a foreign bank as well as provision of accuracy of information and effectiveness of measures preventing risks faced by the bank or branch of the foreign bank.
2. The Steering Council shall set out the rules for the functioning and implementation of the internal control system.
3. Employees of the internal audit unit shall be appointed by the Steering Council of the bank and shall report to the appropriate organs of the bank as defined by the Steering Council.
4. In cases of a branch of a foreign bank, the members of the internal audit unit shall be appointed by the decision-making organs of the foreign bank.
5. Employees of the internal audit unit may not have any other position in the bank or in the branch of the foreign bank.

## **Article 47**

### **Financial reports**

1. The bank or the branch of the foreign bank shall maintain accounts and prepare financial reports, in order to reflect accurately and in accordance with the accounting rules and methods its financial state, on individual or consolidated basis.
2. The accounts and financial reports are prepared according to, the form and substance, stipulated in the Law “On accounting and financial reports” and international accounting standards in force.
3. The Bank of Albania requires that every bank or branch of foreign bank shall have management and accounting procedures as well as sufficient mechanisms of internal auditing, on individual or consolidated basis, in accordance with the by-laws issued by the Bank of Albania.
4. The Bank of Albania defines the form, type, methodology, contents and the time of reporting to the Bank of Albania, of banks and branches of foreign banks.

## **Article 48**

### **The statutory auditor**

1. The Shareholder Assembly of the bank shall appoint in and dismiss from the position of statutory auditor only legal persons who are licensed to carry out the activity of the auditor in the Republic of Albania and approved by the Bank of Albania. The Bank of Albania shall set out through by-laws, criteria for the selection of the statutory auditor, specifying criteria for the legal person as well as for the individual experts of the legal person.
2. The bank shall seek the initial approval by the Bank of Albania for any change of the statutory auditor.
3. The branch of the foreign bank is audited by the statutory auditor that audits the foreign bank or a statutory auditor approved by the Bank of Albania.
4. The bank or branch of the foreign bank shall officially notify the Bank of Albania when they seek to replace their statutory auditor and the latter shall officially notify the Bank of Albania when resigning.
5. The statutory auditor or the key audit partner responsible for carrying out the statutory audit on behalf of the audit company, shall rotate from the statutory audit engagement within a maximum period of seven years from the date of appointment as statutory auditor, and is allowed to participate in the audit of the audited bank or branch of a foreign bank, after a period of at least two years.
6. The key audit partner in a auditing company, who carries out a statutory audit on behalf of the audit company, shall not be allowed to take up management or administrative positions

in the audited bank or branch of a foreign bank before a period of at least two years has elapsed since he resigned as key audit partner in a auditing company.

7. An audit company may not audit more than five banks in the same financial year.

## **Article 49**

### **Audit from the statutory auditor**

1. The statutory auditor approved by the Bank of Albania shall check and evaluated compliance of financial reports of the bank or branch of the foreign bank with the Law “On accounting and financial reports” and international accounting standards in force.

2. The statutory auditor checks and evaluates:

- a) profit and loss account (income and expenditures sheets).
- b) accounting balance.
- c) capital change ratio.
- d) cash-flow statement;
- e) implementation of deletion policies of balance lines;
- f) consolidated reports;
- g) internal audit function;
- h) accounting registration;
- i) information systems;
- j) accuracy and adequacy of reports submitted to the Bank of Albania,
- k) adequacy of accounting procedures and regulatory compliance,
- l) notes attached to financial reports.

3. The statutory auditor shall:

- a) verify the due maintenance or not of accounts and due financial registration, as well as compliance with methods stipulated by the Bank of Albania;
- b) prepare annual reports together with internal audit opinion in relation to the accuracy and adequacy of the reports of the financial state of the bank or branch of foreign bank, relying upon financial statements and reports prepared by the bank or branch of foreign bank in compliance with Law “On accounting and financial reports” and international accounting standards;
- c) evaluate the sufficiency of internal control and its practice and procedures as well make respective recommendations.

## **Article 50**

### **Report of the statutory auditor**

1. The statutory auditor shall produce copies of the auditing reports to the Shareholders Assembly and Audit Committee of the bank or to the relevant authorities of the foreign bank in cases of a branch of a foreign bank.

2. The statutory auditor of the bank or of the branch of the foreign bank shall immediately notify the Bank of Albania of facts or decisions of the bank or branch of foreign bank which, whilst discharging his duties in the bank, he finds to be:

- a) serious breaches of the law, regulations or conditions upon which the license was granted to the bank or branch of the bank or other internal rules that specifically regulate the exercise of banking or financial activities;
- b) deception, theft, money laundering or financing of terrorism;
- c) significant changes in the financial result;
- d) breaches of the statute and internal by-laws of the bank or branch of the foreign bank;
- e) cause for refusal of accounts certification or submission of his objections and
- f) issues which may pose a threat to the sustainability of the activity of the bank or branch of foreign bank.

3. The statutory auditor shall inform the Bank of Albania of any deceitful act of any of the officers of the bank or branch of foreign bank as well as irregularities or failures in management or transactions resulting in loss to the bank.

4. The statutory auditor of the bank or branch of foreign bank shall also immediately notify the Bank of Albania of any such facts as defined in paragraph 2 of this article, found in the course of discharging his duties in a subject who is a connected person with the bank because of his control relationship with the bank or branch of the foreign bank.

5. The notification submitted to the Bank of Albania by the statutory auditor of the bank or branch of the foreign bank pursuant to paragraphs 2, 3 and 4 of this article shall not constitute a breach of any contractual, legal or regulatory provisions of transparency and the statutory auditor shall be entirely discharged of any liability thereto.

## **Article 51**

### **Re-auditing**

1. The Bank of Albania reserves the right to request re-auditing by a different statutory auditor to the extent that the existing statutory auditor of the bank or of the branch of the foreign bank has carried out the auditing or has submitted a report which is inconsistent with the requirements of this Law or of the national and international auditing standards and does not reflect the true and accurate financial situation of the Bank.

2. The Bank of Albania shall have the right to bar the statutory auditor from auditing the bank or branch of the foreign bank for a period of 5 years, in the case stipulated in paragraph 1 of this Article.

## **Article 52**

### **Financial state report deadline**

1. The bank shall submit to the Bank of Albania a copy of the annual report and the statutory auditor's opinion within the first six months of the succeeding year, reflecting the financial and accounting situation on individual and consolidated basis.

2. The branch of the foreign bank shall be obliged to submit to the Bank of Albania, within four weeks of coming into its possession the financial situation and statutory

auditor's report of the foreign bank, banking group and financial holding company.

### **Article 53**

#### **Transparency**

1. The bank or branch of the foreign bank shall publish periodical reports on its financial situation and its risk position, at least once every three months. The Bank of Albania shall decide, through by- laws, the minimum requirements necessary for the abovementioned publications.

2. The bank shall prepare and publish its annual report which shall contain at least:

- a) the accounting balance and off balance items;
- b) the income and expenditures statement;
- c) the cash flow statement;
- d) changes in share capital;
- e) statutory auditor's report;
- f) bank's participation in the capital of other commercial companies;
- g) a list of shareholder's in the bank with more than 5 % participation in the capital and details of their participation;
- h) a list of bank's administrators with participation in the capital of the bank and details of their participation;
- i) a brief description of monitoring management and control of the risk undertaken by the bank as well as instruments used for its limitation.

3. The branch of the foreign bank shall publish the annual report meeting requirements set out in letters (a), (b), (c), (e) and (i) of paragraph 2 of this article which shall either be incorporated in the annual report of the foreign bank or be in the form of a separate report.

4. The bank or branch of the foreign bank shall publish its interests on monetary deposits, credits and commissions for its performed services as well as the methodology used for the calculation of interests on monetary deposits and credit redemption.

5. The Bank of Albania, in case it ascertains that the publications of paragraphs 1 to 4 of this Article are incorrect or inadequate, shall order their rectification and republication, and could take penalising measures as stipulated in Article 89 of this Law.

## **CHAPTER IV**

### **PERMITTED ACTIVITIES FOR BANKS AND BRANCHES OF FOREIGN BANKS**

#### **Article 54**

##### **Banking and financial activities**

1. The bank or branch of foreign bank shall be licensed to carry out banking activities in accordance with stipulations of Article 4 of this Law and financial activities defined in paragraph 2 of this Article.

2 Financial activities shall be considered, the following:

- a) lending of all types including, *inter alia*, consumers credit and mortgage;
- b) factoring and financing of commercial transaction;
- c) leasing;
- d) all payments and money transferring services;
- e) guarantees and commitments;
- f) trading for own account or for the account of clients, whether on a foreign exchange, in an over-the-counter market or otherwise the following:
  - (i) money market instruments (cheques, bills, certificates of deposits, etc);
  - (ii) foreign exchange;
  - (iii) derivative products, included, but not limited to futures and options;
  - (iv) exchange rates and interest rate instruments including products such as swaps and forward agreements;
  - (v) transferable securities;
  - (vi) other negotiable instruments and financial assets including bullion;
  - (vii) participation in issues of all kinds of securities including, underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- g) money broking;
  - (i) asset management such as cash or portfolio management, fund management, custodial, depository and trust services;
  - (ii) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
  - (iii) provision and transfer of financial information, and financial data processing and related software by providers of other financial services;
- h) advisory, intermediation and other auxiliary financial services of all activities listed in letters (a)-(f) above, including credit reference and analyses, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- i) issue and management of payment instruments, (such as credit, debit and charge cards, travellers cheques, banker's draft, and mobile phone payments), including the issue of electronic money.

3 The bank or branch of the foreign bank may not directly take part in industrial or commercial activity, or undertake non-banking services, except for banking and financial activities stipulated in this Law.

4 The bank or branch of a foreign bank shall carry out any of the activities stipulated in paragraph 2 of this Article pursuant to the licence granted by the competent regulatory authorities, if any such licence is required by the law in force.

## **Article 55**

### **Documentation of the bank or branch of the foreign bank**

1. A bank shall prepare and maintain at its head office the following documentation:
  - a) its charter and internal regulations and all amendments thereto;
  - b) a register of its shareholders, including the number of shares registered in the name of each shareholder;
  - c) minutes of meetings and decisions of the Steering Council;
  - d) minutes of meetings and decisions of the Shareholders' Assembly;
  - e) policies and procedures for identifying, monitoring and managing market risks and other possible risks, and respective policies on reserves, in compliance with the by-laws of the Bank of Albania.
  - f) accounting records exhibiting clearly and correctly the state of its business activity, explaining the transactions and financial positions so as to enable the Bank of Albania to determine whether the institution has complied with all the provisions of this Law.
  - g) any such other records that appear to be indispensable as required by this Law, or by the by-laws of the Bank of Albania, as well as the Albanian legislation in force.
  
2. The branch of the foreign bank shall prepare and maintain in its legal seat the following documentation:
  - a) statute of the foreign bank and its internal regulations together with all its amendments;
  - b) minutes of its Directorate`s meetings;
  - c) policies and procedures for recognition, supervision and controlling of all types of risks for the activity of the branch of the foreign bank, as well as respective policies for the reserves, pursuant to by-laws of the Bank of Albania;
  - d) accounting documentation clearly and accurately reflecting its commercial activity situation, providing explanations for the transactions and financial positions, in such a way that the Bank of Albania, is able to determine whether the subject acts in compliance all the dispositions of this Law.
  - e) any such other records that appear to be indispensable as required by this Law, or by the by-laws of the Bank of Albania, as well as the Albanian legislation in force;
  
3. For the purpose of supervisory activity, the bank or branch of the foreign bank shall prepare financial statements according to the form defined by the Bank of Albania.
  
4. The bank or branch of a foreign bank shall regularly publish financial statements in accordance with the requirements of the Albanian legislation in force.

## **Article 56**

### **The documentation on credit transactions**

1. The bank or the branch of the foreign bank shall, for every credit transaction, keep at least the following documents:

- a) request for credit, documents evidencing the use of the credit and its legal status;
- b) description of each collateral, if there is one, which the bank or the branch of foreign banks holds as security, as well as an assessment of the value of the collateral;
- c) full financial statement of the debtor and of each of the guarantors of the debt;
- d) credit agreement, including the principal, interest rate, repayment plan, as well as the purpose of the credit;
- e) copy of the decision approving the credit transaction signed by the responsible officers of the bank or a copy of the minutes of the meeting, when the decision is taken by the Steering Council of the bank.
- f) signature of every person authorized to grant credit on behalf of the credit grantor.

2. The Bank of Albania reserves the right to request additional documentation and procedure besides those stipulated in paragraph 1 of this Article.

## **CHAPTER V**

### **RISK MANAGEMENT**

#### **Article 57**

##### **General provisions**

1. The bank shall provide an adequate level of capital with respect to allowed performed operations, their extension and entirety of risks to which the bank is exposed.
2. The bank or the branch of a foreign bank shall conduct its activity in such a way that the risk to which it is exposed in performing particular operations or the whole activity, be within the limits established in an individual or consolidated basis, and in compliance with the provisions of this Law or the by-laws issued by the Bank of Albania.
3. Throughout its activity, the bank or the branch of a foreign bank must be able to meet its liabilities at due time and continuously.
4. The bank or the branch of a foreign bank shall, in the exercise of its activity, set out criteria, measures and procedures for identification and monitoring of all risks, in accordance with internal regulations of the bank or branch of the foreign bank, approved by its Steering Council.
5. The bank or the branch of the foreign bank shall continuously evaluate the risks and maintain reserve funds for their coverage.

#### **Article 58**

##### **Regulations for risk management**

The Bank of Albania through by-laws, shall set out rules for:

- a) calculation of assets pondered by risk;
- b) calculation of exposure to risk or risks;
- c) risks typology and principles, methodology and rules for risk assessment and management;
- d) classification and measurement of risks of loss resulting from counterparty bankruptcy;
- e) calculation and definition of exchange open position.

## **Article 59**

### **Regulatory capital, capital adequacy and the guarantee**

1. The bank shall maintain regulatory capital in an adequate level for the purposes of carrying out its activities, in a safe and sustainable way as well as fulfil its obligations towards creditors.

2. The structure, its integral elements, methods for the calculation of the regulatory capital of the bank shall be determined in by-laws approved by the Bank of Albania.

3. Ratio of regulatory capital adequacy is determined through by-laws of Bank of Albania and shall not be less than 8 %.

4. In exceptional circumstances, the Bank of Albania shall, through by-laws, have the right to determine that a bank have a higher regulatory capital adequacy ratio than that of paragraph 3 of this Article, where it finds that such a bank carries out or is involved in higher risk activities.

5. The regulatory capital of the bank or parts of it shall not fall below the minimum initial capital required for licensing, during the exercise of the banking activity.

6. The regulatory capital adequacy ratio shall be calculated on individual or consolidated basis.

7. The branch of a foreign bank, in carrying out a secure and sustainable activity, as well as in meeting its obligations towards the creditors must invest part of its initial endowed capital in at least one of the following assets:

- a) deposit in the Bank of Albania at an interest rate determined in agreement between the parties;
- b) securities issued by the Government of the Republic of Albania or the Bank of Albania;
- c) assets bearing low risk, in accordance with regulatory acts of the Bank of Albania.

8. The Bank of Albania determines through its by-laws the criteria of investment, pursuant to paragraph 7 of this Article, in relation to the initial endowed capital paid in money by the foreign bank for the purposes of opening the branch.

9. The assets, pursuant to paragraph 7 of this Article serve as a guarantee for the settlement of liabilities of the branch of the foreign bank towards third parties in the

Republic of Albania, in case it is subject to liquidation procedures.

## **Article 60**

### **Assets pondered by risk**

1. Assets pondered by risk shall make up the sum of the accounting value of the asset items on and off-balance pondered by credit, market and other risks.
2. Pondering coefficient for asset items on and off-balance sheet shall be determined by the Bank of Albania through its by-laws.
3. Notwithstanding paragraph 1 and 2 of this Article the bank may, with the approval of the Bank of Albania, apply other methods and models for the evaluation of credit, market and other risks.

## **Article 61**

### **Credit risk**

1. Credit risk implies the inability of the borrower and of the credit guarantor or of the counterparty for the other assets, to meet the obligations to the bank pursuant to the terms of agreement concluded between them.
2. The bank or the branch of a foreign bank, in accordance with requirements set out by the Bank of Albania must:
  - a) classify and evaluate its assets on and off the balance;
  - b) establish reserve funds to cover possible losses deriving from assets depreciation, on the bases of its classification and estimates;
  - c) draw up internal methods of credit risk assessment.
3. The bank or the branch of a foreign bank shall maintain complete and clear documentation in connection with each stage of credit granting process as well as investment process, ensuring an accurate management of the credit granting process, measures and methods of its monitoring as well as due control on credit risk.
4. Classification of assets on and off the balance sheet of the bank or branch of a foreign bank shall be made assessing at least:
  - a) the debtor's solvency;
  - b) the way in which a debtor meets its obligations;
  - c) the quality of the collateral, if there is one;
  - d) the solvency of the guarantor
5. The bank or the branch of the foreign bank shall monitor the borrower's activity and the amount of the collateral throughout the extent of its claim, for the validity period of the credit, which constitutes an exposure towards risk.

## **Article 62**

### **Exposure towards risk and its limitations**

1. Exposure of the bank or the branch of the foreign bank towards a person or counterparty shall be the sum of all the relationships in the balance sheet assets and the off-balance sheet commitments with this person or counterparty and persons connected thereto.
2. The risk exposure of a bank or branch of a foreign bank towards a person shall not include:
  - a) claims deriving from relationships set out in paragraph 1 of this Article, collateralised by a monetary deposits, to the extent of such collateral;
  - b) securities of the government of Republic of Albania or of the Bank of Albania, or an un-tradable guarantee of the government of the Republic of Albania, or any other collateral as may be determined by the Bank of Albania.

## **Article 63**

### **Large exposures**

1. The banks exposure towards a customer or connected group of customers shall be considered a large exposure when its value is equal to or larger than 10 % of regulatory capital.
2. The bank shall notify the Bank of Albania of any large exposures, as defined in paragraph 1 of this Article in a way and time by by-laws of the Bank of Albania.
3. The Bank shall adopt administrative and accounting procedures, as well as internal control mechanisms to identify, register and monitor all large exposures and their alterations.

## **Article 64**

### **Maximum allowed exposure**

1. The banks exposure towards a person or a connected person **between them** cannot exceed 20% of the regulatory capital.
2. Where such person or connected persons thereto are the parent **bank**, a subsidiary of the bank, one or more subsidiaries of the parent bank, the exposure may not exceed 25% of the regulatory capital.
3. The banks exposure towards connected persons **with the bank** may not exceed 10 percent of its regulatory capital.
4. The bank may not undertake large exposures, which all together exceed 700% of the regulatory capital.

5. The bank, at any time, shall maintain the abovementioned limitations, with regards to its exposures. In case the exposures of the bank exceed the abovementioned limits, the Bank of Albania shall be immediately notified and adopt the necessary measures and determine the necessary time-limits for the re-establishment of these exposures within the abovementioned limits.

### **Article 65**

#### **Exposures towards persons in a special relationship with the bank**

The Steering Council shall initially approve by a majority of 2/3 of the votes all the actions of the bank, resulting in exposure or increased exposure of the bank towards persons stipulated in letters "a" to "f" of the definition on connected persons in paragraph 9.2 of Article 4 of this Law.

### **Article 66**

#### **Liquidity risk**

1. The bank or branch of a foreign bank shall maintain its liquidity in an amount, structure and ratio which will allow them to fulfill their liabilities and commitments on time, with reasonable costs and minimum risk.
2. With the purpose of administering the liquidity risk in an effective way, the bank or branch of foreign bank shall draw up and implement policies in connection with:
  - a) the planning for the transportation of cash, including unforeseen events;
  - b) the continuous monitoring of liquidities;
  - c) taking the appropriate measures for the prevention or elimination of reasons for the lack of cash.

### **Article 66/1**

#### **Systemic risk**

Systemic risk is the risk that threatens the stability, the value of assets and/or confidence in the system or the banking and financial market in general and may be caused by events or special factors in one or more system participants. The Bank of Albania shall lay down in a sublegal act the methods and rules to prevent and/or administer this risk.

### **Article 67**

#### **Mandatory reserve**

The bank or branch of foreign bank shall maintain deposits with the Bank of Albania, as stipulated in the Law "On the Bank of Albania" according to the minimum levels defined by the Bank of Albania, which are called mandatory reserves, and which are related to the amount of passives or alterations related to it, or with specific categories of the passives.

## **Article 68**

### **Reserves for covering losses**

1. The bank or branch of a foreign bank shall continuously evaluate the credit risks and establish reserves to cover losses resulting from bad loans or similar claims, as well as losses resulting from probable off-balance sheet liabilities.
2. The reserves for covering identified losses, or reserves which could be established based on past experience, which exist of the credit portfolio, or which have resulted from probable off-balance sheet liabilities, shall be established by debiting bank's expenditures.
3. The Bank of Albania shall establish through by-laws the method for the calculation of the reserves stipulated in this article as well as the classification criteria based on the credit risks, similar claims or probable off-balance sheet liabilities.

## **Article 69**

### **Publication of interest rates**

The bank and the branch of the foreign bank shall regularly publish the terms and conditions of the interest rates pertaining to monetary deposits, credits and loans and their alterations, as well as the methodology of their calculation as stipulated in the by-laws of the Bank of Albania.

## **Article 70**

### **Capital investments**

1. The bank may invest in the purchasing of shares of commercial companies which are not banks or financial institutions or may be a partner of a commercial company, for an amount not exceeding 10% of the capital of that company, but the investment at any time may not exceed 15% of the regulatory capital of the bank.
2. The maximum allowed investment of a bank in several commercial companies which are not banks or financial institutions or the maximum holdings as a partner in such commercial companies shall not exceed 60% of the regulatory capital of a bank.
3. The bank cannot reduce its capital through the acquisition of its own shares or distribution of the reserve funds without prior approval of the Bank of Albania.
4. The Bank of Albania, for the purpose of granting or refusing such approval, may prescribe, through its by-laws, additional requirements regarding the limitations stipulated in paragraphs 1, 2 and 3 above..
5. The limitations stipulated in paragraphs 1 and 2 of this Article shall not apply:
  - a) when such shares or other ownership rights over them are taken in exchange for

the loans granted. In such case, the bank or branch of foreign shall hold all the share or property rights over them for one year, unless the Bank of Albania decides to extend this period;

b) when the bank or branch of foreign bank has gained such shares or other ownership rights over them in its status as agent;

c) when such shares or other ownership rights them are purchased with the view to selling them to the third parties.

## **CHAPTER VI**

### **THE SUPERVISORY PROCESS**

#### **SUBCHAPTER 1**

#### **GENERAL PROVISIONS ON SUPERVISION**

##### **Article 71**

##### **The supervisory authority**

1. The Bank of Albania shall be the authority charged with the supervision of banks, branches of foreign banks in the Republic of Albania and the branches of the banks licensed by the Bank of Albania operating outside the territory of the Republic of Albania, licensed pursuant to this Law.

2. The Bank of Albania supervises the banks, banking and financial activities in accordance with this Law and other by-laws issued pursuant to it.

##### **Article 72**

##### **Exercise of the power to supervise**

1. The Bank of Albania shall exercise its power to supervise through:

- a) licensing;
- b) regulatory framework;
- c) financial analyses and forecasting, checking the data reported periodically by the banks or branches of foreign banks;
- d) full or partial inspections of the banking activity;
- e) corrective measures pursuant to the supervisory framework;
- f) cooperation agreements with foreign supervisory authorities and foreign banks which operate in the Republic of Albania through their branches or subsidiaries.

2. The subjects of this Law shall be obliged to provide the Bank of Albania with the necessary documentation required for the performance of the supervisory process.

3. The Bank of Albania, in discharging its supervisory function, shall evaluate the

lawfulness and regularities of the banking and financial activity, the ability of a bank or the branch of a foreign bank to administer the faced risk and shall order the adoption of necessary measures aiming at eliminating the breaches and identified irregularities, as well as improve the financial situation of the banks.

4. The Bank of Albania has the right to require from the competent supervisory authority of the foreign bank the necessary information regarding the supervision of this bank's connected persons.

5. The Bank of Albania, for the purposes of supervision of banks, has the right to require information from commercial companies with qualifying holding in banks and commercial companies in co- ownership with the banks.

### **Article 73**

#### **Supervision of a bank, a branch of foreign bank and a branch of banks outside the territory of the Republic of Albania**

1. A bank, branch of a foreign bank, branch of a bank outside the territory of the Republic of Albania, and any other natural or legal person owning a qualifying holding in the bank, shall be subject to inspections by the inspectors of the Bank of Albania and the statutory auditor. The Bank of Albania and the statutory auditor have the right to:

- a) scrutinise and examine accounts, books of the company, documents and any other data situated in their archives;
- b) request, at any time from the administrators, employees and agents of the bank or the branch of the foreign bank to provide information pertaining to the management, direction and transactions. The information shall be prepared in a form set out by the Bank of Albania and the statutory auditor, in accordance with the approved accounting plan.

2. The Bank of Albania may enter into respective agreements, for the inspection of the branch of the foreign bank and subsidiary of the bank outside the territory of the Republic of Albania, based on the reciprocity principle, with the competent supervisory authorities of the foreign country, for the purposes of banking supervision in that country.

3. Balance sheets and financial reports of the branches of the foreign banks shall be prepared in accordance with the Law "On Accounting and financial reports" and international accounting standards which are in line with Albanian legislation in force.

4. The bank prepares and submits to the Bank of Albania, one or more reports for the evaluation of the financial situation of the bank or the branch of the foreign bank, as the case may be, on individual or consolidated basis, as stipulated in by-laws of the Bank of Albania.

5. Authorised employees of the foreign supervisory authority, in charge of banking supervision in that country, following an agreement with the Bank of Albania, may be allowed to inspect a bank which:

- a) is a branch or a subsidiary of the foreign bank, which has its head office in that country;
- b) has a qualifying holding in the foreign bank, the legal seat of which are situated in that country.

6 The bank or the branch of the foreign bank shall allow the control and cooperate with the inspectors of the Bank of Albania and the statutory auditor, approved by the Bank of Albania.

7 The branch of the foreign bank, at least once a year informs the Bank of Albania on the names of the shareholders and their participation in the capital of the foreign bank.

## **Article 74**

### **Supervisory measures**

1. The Bank of Albania, based on the conclusions of the supervisory process or any other available information, shall decide upon the banks or branch of the foreign banks compliance with the legal and regulatory framework for the purposes of a safe and sustainable banking activity. To this end, the Bank of Albania, in accordance with the dispositions of this Law, shall adopt supervisory measure towards the subjects of this Law.
2. The Bank of Albania, in accordance with the provisions of this Law, shall adopt one or more of the following measures toward the bank of branch of foreign bank:
  - a) warns the subject of corrective measures in case of the failure to observe the standards on a safe and sustainable activity;
  - b) orders the interruption of the unlawful actions, and rectification of breaches of legal and regulatory provisions;
  - c) sanctions;
  - d) places the bank in conservatorship;
  - e) revokes the license;
  - f) commences the procedures for compulsory liquidation;
  - g) orders the shareholders to sell part or all of the bank's assets and the transfer of part or all of the bank's liabilities, including in any case the total of insured deposits, to a bank or other subject approved by the Bank of Albania;
  - h) orders the shareholders to perform the legal reorganization of the bank or its sale to another bank approved by the Bank of Albania;
  - i) establishes a bridge bank.
3. The Bank of Albania shall define detailed conditions and methods for adoption and application of supervisory measures.

## **Article 75**

### **Preventive measures**

1. The Bank of Albania shall warn the bank or the branch of the foreign bank on corrective measures in case of failure to observe standards on a safe and sustainable activity, and through the inspection report, requires from the bank or the branch of a foreign bank, the provision of a plan or agreement for the abatement of the unlawful acts and rectification of the breaches of the dispositions of this Law and compliance with the standards for a safe and sustainable activity.

2. The bank or the branch of a foreign bank shall submit to the Bank of Albania the plan or agreement for the correction of unlawful actions, within 30 days from receipt of the request, according to paragraph 1 of this article or according to the time-limits decided by the Bank of Albania.

3. The Bank of Albania, within 30 days of receipt of the proposed plan or agreement from the bank or the branch of the foreign bank, shall inform the latter in writing on the grant or not of the approval for the plan or agreement, and may request additional information if necessary. The Bank of Albania may extend the deadline for the notification of the approval of the plan or the agreement.

4. The Bank of Albania shall undertake further action in cases of non-compliance with the obligations pursuant to paragraph 1 to 3 of this Article.

## **Article 76**

### **Order for the abatement of the unlawful acts**

1. The Bank of Albania shall order the abatement of unlawful acts and shall require the rectification of the breaches of this Law and other by-laws, if, during the inspection, it finds that:

- a) the set out conditions for carrying out the banking and financial activity are not fulfilled;
- b) the rules on risk management are breached;
- c) the accounting rules are breached;
- d) the internal control rules are breached;
- e) there is a breach of obligations on reporting and notifications;
- f) the administrator of the bank or branch of foreign bank has not been initially approved by the Bank of Albania;
- g) the requirements of investment for the branch of the foreign bank, stipulated in Article 59, paragraph 8 are not met.
- h) the bank or branch of foreign bank is in breach of the provisions of this Law and other by-laws implementing it.

2. The Bank of Albania shall determine the time-limits for the rectification of the breaches stipulated in the first paragraph of this article.

3. A bank or branch of foreign bank subject to an order issued by the Bank of Albania as stipulated in the first paragraph of this article, may request in writing to the Bank of

Albania that it revises or revokes the order issued, if the circumstances change.

### **Article 77**

#### **Reporting on the implementation of the order**

1. A bank or the branch of a foreign bank, shall submit to the Bank of Albania a detailed report on the measures taken to rectify the breaches, within time-limits define by the Bank of Albania in the issued order.
2. The Bank of Albania shall verify the rectification of the breaches following receipt of report by the bank or branch of a foreign bank as stipulated in paragraph 1 above.
3. The Bank of Albania shall take a decision on whether to accept the report on the rectification of breaches, within 30 days of receipt.

### **Article 78**

#### **Breaches of risk management rules**

1. The bank or branch of a foreign bank shall be deemed to have breached risk management rules when:
  - a) solvency of the bank or liquidity of the foreign bank has fallen below the required limit;
  - b) the bank or branch of a foreign bank carries out activities not included in the annex to the license;
  - c) the branch of a foreign bank carries out activities for which the foreign bank is not licensed to carry out;
  - d) the bank or branch of foreign carries out activities which threaten the liquidity and solvency.
2. The Bank of Albania, defines through by-laws the time-limits for the rectification of the breaches defined in paragraph 1 of this Article.

### **Article 79**

#### **Measures for the implementation of the risk management rules**

1. The Bank of Albania, when it finds, throughout its supervision activity of banking and financial activities, that there are breaches of risk management rules, despite the order for the elimination and rectification of the breaches stipulated in Article 76, shall also order:
  - a) the bank or branch of a foreign bank to draw up a plan to meet the required solvency limit of the company;
  - b) the bank to call a Shareholders' Assembly meeting, and propose the increase of the initial minimum capital through new investments, or by retaining profit ( by not declaring dividends);
  - c) the bank or branch of foreign bank to suspend payment to particular legal persons;
  - d) full or partial suspension of the dividend or any other form of profit distribution;

- e) the taking of measures for lowering the operational costs of the bank or branch of the foreign bank, including the limitations on payment of wages and other remuneration of the responsible persons and employees of the bank or the branch of the foreign bank, as well as limitations on the extension of the bank or branch of a foreign bank's network;
- f) the taking of measures for the limitations on the increase of bank's or branch of the foreign bank's assets, including off-balance sheet items carrying risk;
- g) the taking of measures to require from the bank and branch of the foreign bank or their connected persons, to alter, decrease, and suspend the carrying out of activities which the Bank of Albania has determined as carrying high risk for the bank or branch of a foreign bank or as a result of which the bank has incurred considerable losses;
- h) the suspension of one or more of banking and financial activities of the bank or branch of a foreign bank;
- i) compliance with provisions relating to deposit insurance.

2. The Bank of Albania, may order the steering organs of the bank or branch of a foreign bank, in case of serious breaches of risk management rules, to dismiss one or more executive directors and their substitution within a period of 1 month.

## **Article 80**

### **Serious breaches**

1. The bank or branch of a foreign bank, shall be deemed to have committed serious breaches, in the exercise of its banking and financial activities according to this Law when:

- a) there are breaches of legal acts and by-laws as a result of which the bank or branch of a foreign bank has incurred considerable financial losses;
- b) it has refused to abate unlawful acts, or has refused to rectify breaches of legal acts and by-laws;
- c) there are breaches of the Law "On accounting and financial reports" as well as international accounting standards, resulting in difficulties in the determination of the financial situation of the bank;
- d) there is incompatibility with standards of a safe and sustainable banking activity, for a relatively long period;
- e) there are serious problems in the internal control programs and systems, of the policies of banking activities, in the operational methods or information systems of its administration, despite the fact that these problems have influenced or not the financial situation of the bank or the branch of the foreign bank;
- f) there are concrete facts relating to internal abuse, despite the fact that the bank or the branch of the foreign bank has not incurred any damage;
- g) there are voluntary or gross breaches of legal acts or by-laws by the staff and directing organs or these breaches had been repeated;
- h) there are breaches of legal acts and by-laws, committed by employees or connected persons of the bank or branch of the foreign bank, which have resulted in material profits or favours by the banking and financial activities;
- i) the bank or branch of foreign bank has not insured the deposits in compliance with the Law "On deposit insurance".

## **Article 81**

### **Measures for the implementation of requirements on the report of capital adequacy**

The Bank of Albania when, in exercising the supervision of banking and financial activity, finds that the ratio of capital adequacy of the bank is lower than the minimal ratio stipulated in Article 59 of this Law, orders:

- a) the prohibition of profit distribution;
- b) lowering of bank's expenditure;
- c) limitations on the increase of financial assets of the bank, including items off-balance sheet carrying risk;
- d) prohibition on the bank to invest in the participation in other legal persons capital;
- e) prohibition on establishing of new branches of the bank, extension of banking network and commencement of new activities;
- f) prohibition of the banks exposure to a person;
- g) establishment of a Supervisory Group, which assesses the possibility to establish a bridge bank and/or prepare the bank to go into conservatorship or liquidation. The establishment, functions and duties of the Supervisory Group are set out in Bank of Albania's by-law acts.

#### **Article 81/1**

##### **Establishment and functioning of a bridge bank**

**Abrogated**

#### **Article 81/2**

##### **Organization and management of the bridge bank**

**Abrogated**

#### **Article 81/3**

##### **Mode of conducting operations**

**Abrogated**

#### **Article 81/4**

##### **Closure and/or liquidation of the bridge bank**

**Abrogated**

## **SUBCHAPTER II**

### **CONSOLIDATED SUPERVISION**

## **Article 82**

## **Banking group**

1. The Bank of Albania shall exercise the supervision of banking and financial groups on the basis of financial consolidated reports as well as supervision reports.
2. A subject that is part of the same banking or financial group, which is not deemed to be superordinate institution but the activity of which is included for the purposes of consolidated supervision, shall be considered subordinate institution.
3. Notwithstanding paragraph 43 of Article 4 of this law, superordinate institution shall be considered a bank or another non-bank financial subject licensed by the Bank of Albania, in cases when the Bank of Albania determines that the bank or the other non-bank financial subject exercises a considerable influence on another financial institution on other basis.
4. The Bank of Albania enters into agreements with domestic or foreign competent supervisory authorities responsible for the supervision of a bank or non-bank financial subject in a banking group or financial holding group operating in the Republic of Albania, or vice-versa, in order to define the scope of operation and the manner of consolidated supervision of banks' operations, of the banking group, or financial holding company.
5. The shareholders owing a qualified holding and administrators of the of the superordinate bank in a financial holding company, are subject to provisions of Chapter II and III of this Law relating to qualifying and disqualifying criteria.

### **Article 83**

#### **Responsibilities of a superordinate bank in a banking group**

For the purposes of consolidated supervision pursuant to this Law, the superordinate bank in a banking group is responsible for the fulfillment of the obligations on consolidated reporting of the banking group as a whole.

### **Article 84**

#### **Risk management in a banking group**

1. A banking group as a whole shall also act in accordance with the regulations on risk management stipulated in this Law, and by-laws issued by the Bank of Albania.
2. A banking group shall be organized in such a way that a superordinate bank in a banking group is able to monitor the risks to which the banking group is exposed and implement the measures for managing those risks.
3. A banking group as a whole shall determine the consolidated position of:
  - a) regulatory capital;
  - b) capital adequacy;
  - c) risk exposure;
  - d) open foreign exchange positions;
  - e) investments in the capital of non-financial institutions.

## **Article 85**

### **Consolidation of financial statements of a banking group**

1. A superordinate bank in a banking group shall prepare and submit consolidated financial statements to the Bank of Albania.
2. Consolidated financial statements of a banking group shall be prepared on the basis of individual financial statements of the group members drawn up in accordance with the Law “On accounting and financial reports” and international accounting standards.
3. The Bank of Albania shall prescribe through its by-laws the scope and frequency of consolidation, as well as the content of consolidated financial statements.
4. The Bank of Albania may order a bank in a banking group to carry out the consolidation of individual items or individual operations or groups of operations within the banking group, if such is necessary for the complete and objective presentation of the financial position and operating results of the banking group as a whole or an individual bank in the banking group.

## **Article 86**

### **Consolidation in other cases**

1. When a banking group, as specified in this Law, cannot be identified, the Bank of Albania may order a bank in which a legal person that is not a bank or a financial holding company has a qualifying holding or exercises control, to carry out the consolidation of individual operations or groups of operations or the complete consolidation of the financial statements of all members of the group, regardless of their activity, if such is necessary for the complete and objective presentation of the financial position and operating results of the bank.
2. The Bank of Albania may instruct a bank that is superordinate to a legal person that is not a bank or financial holding company, to carry out the consolidation of individual operations or groups of operations or the complete consolidation of the financial statements of all members of the group regardless of their activity, if such is necessary for the complete and objective presentation of the financial position and operating results of the bank.
3. Legal persons referred to in paragraphs 1 and 2 of this article shall submit to the bank all information required for the consolidation of operations or groups of operations or the complete consolidation of the financial statements of the group referred to in paragraphs 1 and 2 of this Article.
4. The bank shall immediately notify the Bank of Albania if the legal persons referred to in paragraphs 1 and 2 of this article fails to submit to it all information required for consolidation.

## **Article 87**

## **Notification to the Bank of Albania and disclosure of data**

1. A superordinate bank shall promptly notify the Bank of Albania without delay of all newly arisen facts and circumstances that are important to assess whether the banking group exists, as defined by this Law.
2. The bank shall promptly notify the Bank of Albania of all subordinate and superordinate companies that constitute a group, regardless of their activity.
3. Upon the termination of a calendar year, a superordinate bank in a banking group shall submit to the Bank of Albania current information on subordinate or superordinate institutions in the banking group, as well as information on subordinate and superordinate companies that constitute a group, regardless of their activity.
4. The Bank of Albania may prescribe the content of the notification referred to in this Article, as well as the terms and time limits for its submission.

## **Article 88**

### **Submission of Data**

1. Subordinate companies in a banking group shall submit to the superordinate bank all data and information required by the superordinate bank for consolidation, and ensure appropriate internal control procedures for the verification of the accuracy of such data and information.
2. Legal persons who are part of the group shall submit to their superordinate bank information on their participation in other legal persons that is important to establish whether the superordinate bank has the obligation to carry out consolidation.
3. A superordinate bank in a banking group shall ensure that the subordinate companies in the banking group and the legal person who holds a qualifying holding or exercises control over it, submit to it the data required for consolidation. If the legal person who holds a qualifying holding or exercises control over it fails to submit to the superordinate bank the data required for consolidation, the bank shall immediately notify the Bank of Albania.

## **SUBCHAPTER III**

### **SANCTIONS**

## **Article 89**

### **Penalizing measures**

1. The Bank of Albania for the purposes of eliminating the breaches of a bank or branch of foreign bank, in addition to measures stipulated in Articles 75, 79 and 81 of this Law, shall order, despite their ranking, one or more of the following measures:
  - a) fine the administrators of the bank or branches of a foreign bank and/or the bank or foreign bank branch.

- b) issues written warning notices to the administrators of the bank or branch of a foreign bank.
2. The Bank of Albania shall fine the administrators of the bank or branch of a foreign bank **and/or the bank or foreign bank branch** up to the amount of 2.000.000-2.500.000 Lek when:
- a) there are breaches of provisions of article 7 and 22 of this Law;
  - b) the bank or branch of a foreign bank carries out banking and financial activity included in the annex to the license;
  - c) the bank has established a branch outside the Republic of Albania without prior approval by the Bank of Albania ;
  - d) there are breaches of provisions of article 24, 25, 26 paragraph 1, 55, 64, 65 and 70 of this Law;
  - e) the bank or branch of foreign bank has not established reserves as required in articles 67 and 68 of this Law;
  - f) the bank or branch of foreign bank has not maintained the appropriate level of regulatory capital.
3. The Bank of Albania shall fine the administrators of the bank or branch of a foreign bank **and/or the bank or foreign bank branch** up to the amount 500.000-800.000 when it finds:
- a) breaches of provisions of article 26 paragraph 2, 41, 47, 48, 52 and 53 of this Law;
  - b) breaches of rules pertaining to internal control;
  - c) there has been no rectifying measures for the elimination of breaches, or such rectifications have been taken beyond the set time limits.
4. The Bank of Albania, in the event of repetition of breaches, shall double the sanctions stipulated in paragraph 2 and 3 of this Law, as well as may:
- a) suspend the administrators for up to twelve months;
  - b) request the removal from office of one or more of the administrators;
  - c) order the suspension of the remuneration for the administrators by the bank or branch of a foreign bank;
  - d) **abrogated**
  - e) revoke the license of the bank or branch of a foreign bank in the territory of the Republic of Albania.
  - f) place the bank or branch of the foreign bank in liquidation
5. The Bank of Albania, in cases of the bank or branch of a foreign bank not complying with one or more of the imposed measures for the improvement of the bank`s or branch of a foreign bank`s situation or the rectification of breaches, shall escalate the penalizing measures.
6. The Bank of Albania, besides ordering one or more of the sanctions stipulated in paragraph 2 of this Article, shall also request from the shareholders to rectify the situation within 6 months in cases of the ratio of the regulatory capital of the bank and its assets carrying risk as well as off-balance sheet items is higher than half of the minimal required

ratio but lower than the minimal required ratio, as defined by the Bank of Albania.

## 7. Abrogated

8. The Bank of Albania shall inform the bank or branch of the foreign bank as well the responsible persons for all ordered penalizing measures, within 10 calendar days from the date of the decision.

9. The Supervisory Council of the Bank of Albania determines the appropriate authority (representative organ) in the Bank of Albania for the issuance of acts pertaining to the abovementioned measures.

## Article 90

### The carrying out of unlicensed activity

## Abrogated

## Article 91

### The obligation to protect professional secrecy

1. The administrators, employees, actual as well as previous agents of the bank, judicial authorities, and the inspectors or other employees of the Bank of Albania or of other respective foreign authorities of banking supervision, shall keep the secrecy for every information obtained in the exercise of their activity in the bank or branch of a foreign bank and shall not utilize it for personal profits or third parties outside the bank or branch of a foreign bank, whom they serve or have served.

2. The information stipulated in paragraph 1 of this Article, shall be made available only to the Bank of Albania, the statutory auditor of the bank or branch of the foreign bank, administrators, agents, and employees of every information system or official service stipulated in Article 23 of the Law “On the Bank of Albania”, as amended, to the conservator and liquidator appointed by the Bank of Albania, to juridical authorities whose right derives from the law, as well as when it is necessary for the protection of interests of the bank or branch of a foreign bank during legal proceedings.

3. All breaches of the provisions of this Article constitute summary offence. The persons who are guilty of such breaches shall be punished by fine or imprisonment of up to one year.

4. In cases of commission of this act for the purposes of profit or incurring damage to another person, it shall constitute a summary offence and will be punishable by fine or imprisonment of up to two years.

## Article 92

### Right to be heard of the interested party

The Bank of Albania, prior to issuing the administrative measure, shall grant to the subject, against which, the proposed measure is to be affected, the right to express in writing within

5 days its opinion in relation to the proposed measure.

### **Article 93**

#### **Administrative and judiciary appeal**

1. All the subjects affected by an administrative act of the Bank of Albania, may request from the Governor of the Bank of Albania the nullification or alteration of the act, within 15 days from the day the complainant has received notification of the act or from the date of its publication.

2. The administrative appeal to the Governor is a necessary condition for the exhaustion of the administrative recourse, to enable the subject to seek redress from the court.

3. The administrative appeal as stipulated in paragraph 1 of this Article will not suspend the application of the administrative act issued by the Bank of Albania in cases when the latter values that the interest of the depositors and the security or stability of the banking system and the financial system as a whole is threatened by the suspensive effect of the complaint.

4. The administrative appeal is submitted in a written form and shall contain the reasons for which the act is being appealed, and a copy of the administrative act should be attached to it.

5. The Bank of Albania shall condition the administrative appeal on the offering of appropriate legal guarantees by the affected citizens or other legal subjects, for the initial and immediate execution of the administrative act, when it deems that the implementation of the administrative act shall contribute to the maintenance of safety and sustainability of the financial system as a whole.

6. In all cases of judicial complaint, against the claim resulting from a decision of the Bank of Albania, the Appeal Court may decide only if the Bank of Albania has acted arbitrarily or recklessly.

### **Article 94**

#### **Civil or penal liability**

The penalizing measures and penalties stipulated in Article 89 of this Law shall not exclude civil or penal liability as defined in other laws.

### **Article 95**

#### **Fines cashing up**

Fines imposed according to Article 89 of this Law are cashed up for the account of the Bank of Albania.

**CHAPTER VII**  
**LIQUIDATION**  
**SUBCHAPTER I**  
**CONSERVATORSHIP**

**Abrogated**

**SUBCHAPTER II**  
**LIQUIDATION**

**Article 106**  
**Liquidation types**

The bank or branch of foreign bank shall be liquidated in accordance with the provisions of this Law in two ways:

- a) voluntary liquidation
- b) compulsory liquidation.

**Article 107**

**Voluntary liquidation**

1. Voluntary liquidation shall take effect where:
  - a) the shareholders of the bank or the foreign bank, in the case of the branch of the foreign bank, decide to place the bank into liquidation process. In such case the bank or branch of the foreign bank shall notify in advance the Bank of Albania of such decision;
  - b) the shareholders of the bank or the foreign bank, in the case of the branch of the foreign bank, decide to change the activity of the bank or branch of the foreign bank, to discontinue with the exercise of the banking activity.
2. The Bank of Albania shall revoke the respective license and the bank or the branch of the foreign bank shall deposit such license with the Bank of Albania, upon submission by the bank or branch of foreign bank of the voluntary liquidation decision.
3. The voluntary liquidation decision shall be sent to the Insurance Deposits Agency for it to exercise its powers under the Law “On deposits insurance”.
4. Where a decision of the bank or branch of the foreign bank has been taken for the placement into voluntary liquidation, the shareholders of the bank or the bank itself, in the case of the branch of foreign bank, must meet all its creditors' claims to the extent that the bank's clients' interests are protected.

5. The voluntary liquidation decision shall be announced and published by the bank or branch of the foreign bank in the Official Journal of the Republic of Albania, as well as in two national newspapers.

6. The provisions of the Law “On commercial companies” shall apply with respect to the voluntary liquidation to the extent that they do not contradict with this Law.

## **Article 108**

### **Circumstances for compulsory liquidation**

1. The Bank of Albania shall place the bank or branch of foreign bank into compulsory liquidation when it finds that one or more of the following circumstances are present:

a) the license for the bank or branch of the foreign bank has been revoked in accordance with the provisions of this Law;

b) the bank or branch of the foreign bank does not pay its financial obligations as stipulated in this Law;

c) bank`s capital adequacy continues to be less than 50% of the minimum ratio as determined in the by-laws of the Bank of Albania, even after the expiration of the deadline set out in Article 96 to this Law;

d) the amount of assets of the bank or branch of the foreign bank is smaller than the amount of its debts;

e) the bank is unable to meet its depositors demands or meet payment in the course of its normal commercial activities;

f) it is found in the course of the exercise of supervision of the bank or branch of the foreign bank, that the assets are insufficient for the purposes of meeting debts towards creditors;

g) when the conditions set out in paragraph 3 of Article 25 of the law “On recovery and resolution in banks in the Republic of Albania” exist;

h) when it is concluded by the Bank of Albania that the voluntary liquidation may lead to damages to the interests of creditors;

i) when the shareholders of the bank or the foreign bank in the case of the branch of the foreign bank refuse to invest for the purposes of increasing the capital to reach the threshold set out by the Bank of Albania.

j) where there are credible evidence that the administrators of the bank or branch of foreign bank are involved in unlawful transactions, have committed serious deception or have personally benefited causing considerable damages to the bank, branch of the foreign bank or third parties.

k) when the creditors of the bank or branch of foreign bank prove to the Bank of Albania, that 10% or more of the debt evidenced in the latest accounting balance sheet of the bank has not been paid in time. One or more interested persons have the right to request the competent court to compel the Bank of Albania to act in accordance with this paragraph where the Bank of Albania has not effected the above actions.

2. In the case of the branch of the foreign bank, the assets enlisted in Article 59, paragraph 7 shall be blocked by the Bank of Albania, when:

a) the supervisory authority of the country of origin estimates that the foreign bank is at financial risk and initiates the liquidation proceedings; or

b) in the case of a branch of a foreign bank it finds that there exists one or more of the circumstances stipulated in paragraph 1 of this Article.

## **Article 109**

### **The decision for compulsory liquidation**

1. The Bank of Albania shall place the bank or branch of the foreign bank into compulsory liquidation process following the ascertainment of circumstances set out in Article 108 of this Law.

2. The decision of the Bank of Albania to place the bank or branch of the foreign bank into compulsory liquidation according to paragraph 1 of this article, shall stipulate:

- a) the reasons for the decision;
- b) the main tasks of the liquidator;
- c) the name of the bank or branch of the foreign bank being liquidated;
- d) the address of legal seat;
- e) the liquidator's full name;
- f) the date for liquidation process commencement;
- g) the revocation of the license.

3. The Bank of Albania shall send a copy of the decision for the liquidation of the bank or branch of foreign bank to the Insurance Deposits Agency.

## **Article 110**

### **Notification of commencement of compulsory liquidation process**

1. The notification of placement of the bank or branch of the foreign bank into liquidation, following the decision of the Bank of Albania and revocation of its license shall be published in the Official Journal of the Republic of Albania, Official Bulletin of the Bank of Albania and in at least two national newspapers.

2. The notification stipulated in paragraph 1 to this article shall include:

- a) a copy of the decision of the Bank of Albania for the placement of the bank or branch of the foreign bank into liquidation in accordance with article 109 of this Law;
- b) invitation to the creditors to register their claims with the liquidator;
- c) invitation to the debtors of the bank to immediately meet their debt obligation.

## **Article 111**

### **Selection and appointment of the liquidator**

1. The Bank of Albania shall appoint the liquidator who will take in possession and control the bank or branch of foreign bank for the duration of the liquidation process in accordance with the terms set out in this Law.

2. The Bank of Albania shall appoint the liquidator immediately after the placement of the bank or branch of the foreign bank into liquidation

3. The liquidator's salary and expenses for the exercise of his functions shall be borne by the bank or branch of foreign bank which has been placed into compulsory liquidation.

### **Article 112**

#### **Qualifying criteria for the liquidator**

1. For the purposes of discharging his functions pursuant to article 111 of this Law the candidate must meet the following criteria:

- a) meet the criteria set out in this Law and bylaws of the Bank of Albania for the administrators of the bank or branch of foreign bank;
- b) must have at least 5 years of work experience, as executive director in a financial institution or bank or auditing company.

2. Prior to his appointment the person proposed to hold the office of the liquidator of the bank or branch of the foreign bank shall submit an attestation stating that against him there are no prohibitions of those stipulated in Article 113 of this Law.

### **Article 113**

#### **Disqualifying criteria for the liquidator**

1. There shall not be appointed as a liquidator a person who:

- a) has been criminally convicted by the court of a criminal offence punishable by imprisonment;
- b) there are founded doubts, at the time of his appointment, of his involvement in deceptive acts, or he is being asked to pay damages which may hamper or impede substantively its ability to discharge his duties;
- c) is subject to inquiries for deception or other criminal offences;
- d) there is a court decision in force to deem him as unable to discharge his duties towards the bank.
- e) there are conflicts of interest with the bank or the branch of the foreign bank as defined in article 114 of this Law.

2. The liquidator approved from the Bank of Albania shall be replaced where he does not discharge his duties properly or where he is no longer legitimate for serving as a liquidator. Where a liquidator is replaced, the new liquidator shall continue to have the powers of the former liquidator and have all the assets, books and accounts of the bank or branch of foreign bank transferred to him.

### **Article 114**

#### **Conflict of interests**

1. Prior to being appointed as liquidator by the Bank of Albania, the proposed person must submit to the Bank of Albania as soon as possible information in relation to any conflict of interest between him and the bank or branch of the foreign bank upon which a decision to compulsory liquidation has been taken.

2. The information set out in paragraph 1 to this article shall include private, commercial and financial interests of the person proposed to be the liquidator or his/her spouse as well as his/ her children including, *inter alia*, information of the following:

- a) loans or credits from the bank or branch of the foreign bank the assets of which are subject to liquidation;
- b) employment relationships with the bank or branch of the foreign bank the assets of which are subject to liquidation;
- c) ownership rights in the bank or branch of the foreign bank the assets of which are subject to liquidation
- d) his position of officer, employee, director or shareholder with qualified participation for the past five years with any other bank;
- e) financial, commercial relationships or close financial relationships with any subject with qualified participation in the capital of the bank or branch of foreign bank the assets of which shall be subject to liquidation, including information of expected employment contracts or negotiation with such subject;
- f) the list and description of cases where he has been unable to redeem his debt towards the bank or branch of foreign bank for the past five years;
- g) ownership rights on any such property, if the proposed person evaluates, posses or manages an immovable property;
- h) any other commercial activity or participation in the capital of a subject exercising financial activity which may adversely affect the independence of the person acting as a liquidator;
- f) any other information requested by the Bank of Albania.

3. The person proposed to be the liquidator shall prove that there are no conflicts of interest resulting from his family or commercial relationships, within the deadline set out for the submission of the information in paragraph 4 of this article. Where it is proved that the conditions considered as conflict of interest between the proposed liquidator and the bank or branch of the foreign bank as set out in paragraph 2 of this article are met, the Bank of Albania shall not approve the appointment of the proposed liquidator and he shall be so notified.

4. Where the appointed liquidator is made aware of the presence of conflicts of interests, he shall immediately notify the Bank of Albania within 10 days of his becoming aware of such conflict and shall produce the measures taken or to be taken for their avoidance. The Bank of Albania shall take measures for the respective changes to take effect.

5. The liquidator appointed by the Bank of Albania must not:

- a) accept or request benefits, presents or other things with value directly or indirectly from any subject:

- (i) who, within his awareness, may ask him to effect interference in relation to the liquidation process; or
  - (ii) with material interest which could be substantially affected by discharging or neglecting his tasks;
- b) to use improperly or allow the improper use of his property, or the property he supervises or controls, resulting in private benefits of any other person;
  - c) effect any unauthorized promise or action.

### **Article 115**

#### **Liquidator's independence and protection of confidentiality**

1. The liquidator shall be independent in the exercise of his tasks in the course of the liquidation of the bank or branch of foreign bank.
2. The liquidator shall observe all requirements with respect to the protection of professional secrecy as well as the secrecy of the client's information as stipulated in Articles 91 and 125 of this Law.

### **Article 116**

#### **Legal effects of liquidation**

1. The following actions shall be effected upon the bank or branch of foreign bank being placed into compulsory liquidation and upon liquidator's appointment:
  - a) the Bank of Albania shall revoke the license of the bank or branch of foreign bank;
  - b) the liquidator shall become the sole legal representative of the bank or branch of foreign bank and all claims against them shall be addressed to the liquidator;
  - c) all legal proceedings against the bank or branch of the foreign bank shall be suspended and such procedures shall not commence, except for when consented to by the Bank of Albania and upon such conditions that the Bank of Albania determines;
  - d) no payment of interest or other debt of the bank or branch of the foreign bank shall be effected;
  - e) the transfer of shares of the bank shall be rendered invalid except for when it is made with the consent of the Bank of Albania;
  - f) any other legal, contractual, or random term upon whose deadline expiration a claimed debt or right of the bank or branch of foreign bank may be extinguished or frozen, shall be adjourned for a period of up to six months from such expiration or frozen deadline;
  - g) any seizure, or charge, shall have no effect unless it was effected six months prior to bank's placement into liquidation. There shall be no seizure, charge or executive title effected upon the assets or the property of the bank or branch of the foreign bank, pursuant to a court decision taken prior to the appointment of the liquidator for a sum as stipulated in the by-laws of the Bank of Albania for the duration of the liquidation procedure;
  - h) rights of shareholders other than the rights to dividends out of liquidation procedures shall be frozen;
  - i) all the powers and responsibilities of the steering organs and shareholders of the

bank or branch of the foreign bank shall cease to have effect;

j) the procedure for the compensation of depositors in accordance with Law “On deposits insurance” shall start.

2 Where the payment or transfer of the bank or branch of the foreign bank is made for the purpose of favouring its beneficiary, it will be so presumed except where:

a) the payment was made by the bank or branch of the foreign bank for the creditor in the course of normal commercial activity, for the full or partial repayment of the debt or any other obligation of the bank towards the beneficiary;

b) the transfer of an asset or property was made by the bank or branch of foreign bank in consideration for a value equal to the true market value of the transferred assets or property, or

c) the transfer has been effected for part of the insured deposits.

3 Any payment or transfer of any asset of the bank or branch of foreign bank, as well as payments stipulated in letter (c) of paragraph 2 of this Article, are rendered null, where they were effected:

a) within the three month period prior to the liquidator’s taking possession and control on the bank; or

b) in the case of a legal person connected with the bank, within a period of one year prior to the liquidator’s taking possession and control on the bank to the extent that it favours the beneficiary in comparison with the other creditors of the bank. There shall be excluded from the effects of this rule, payments of banking deposits for sums stipulated by the Bank of Albania.

4 The persons requiring to have the transaction rendered null for reasons stipulated in this paragraph shall be obliged to prove that the payment or transfer was made to realise the favours as defined in this paragraph.

5 **Abrogated by law no 133/2013, dated 29.04.2013 “On Payment System”.**

6 The liquidator and persons appointed for his representation may not be paid an amount larger than those paid to the employees of the bank for similar services.

7 The Bank of Albania instructs the appointed liquidator on conducting the compulsory liquidation procedure of the bank, according to sublegal acts approved by the Bank of Albania.

## **Article 117**

### **Duties and powers of the liquidators**

1. The liquidator appointed by the Bank of Albania shall discharge his duties under the supervision of the Bank of Albania.

2. The liquidator shall represent the bank or branch of foreign bank in the course of the compulsory liquidation.

3. The liquidator shall sign all acts issued by the bank or branch of foreign bank, containing its name, accompanying them with the note “bank/branch of foreign bank in compulsory liquidation”.
4. The liquidator appointed by the Bank of Albania shall, within three days of his appointment take possession and control of the bank or branch of foreign bank.
5. The liquidator appointed by the Bank of Albania shall, within three days of his appointment place the bank or branch of foreign bank into liquidation and shall:
  - a) send a notice for publication of such appointment to all the offices of the bank or branch of foreign bank, containing the date and time that the bank`s liquidation takes effect;
  - b) publish such notification in one or more national newspapers;
  - c) send a copy of the notification stipulated in (a) and (b) of this paragraph to the Bank of Albania and to the Deposits Insurance Agency.
6. The liquidator has full and exclusive powers for the bank`s management, direction and control.
7. The liquidator has full and exclusive power for the administration, direction, and control of the branch of the foreign bank as well as of all the assets of the branch of the foreign bank in the territory of the Republic of Albania.
8. The liquidator shall aim at the provision of the maximum amount of the assets of the bank or branch of foreign bank, notwithstanding the revocation of the bank`s license, effecting the following actions:
  - a) continues or discontinues any financial or banking transaction;
  - b) borrows monetary assets securing or not such loans with the assets of the bank or branch of the foreign bank.
  - c) stops or restricts the payment of any debt as defined in the term of letter (f) of this paragraph;
  - d) resets the rates for the repayable interests for the passives of the bank or branch of foreign bank, on the condition that such rates are not lower than those prevailing in the market.
  - e) employs any necessary professional officer, employee or advisor;
  - f) executes any instruments on behalf of the bank or branch of the foreign bank and files claims or represents in and pursues in his name any legal proceedings, after taking the prior approval of the Bank of Albania for the following actions:
    - (i) sale of any asset of the bank or branch of foreign bank with a value exceeding the threshold stipulated by Bank of Albania;
    - (ii) placement of charges as a means for the compulsory execution of the debt, on any asset of the bank or branch of foreign bank and for the benefit of creditor in consideration for a new credit granted to the subject in an amount exceeding that set through by-laws by the Bank of Albania;

- (iii) rescheduling or remission of any claimed debt, where the claimed amount exceeds the sum set through by-laws by the Bank of Albania;
- (iv) payment of any other claimed and recognized debt in accordance with the provisions of this law, on which all the depositors and creditors in equal position must be treated equally.

9. The liquidator shall have the right to terminate:

- a) employment contracts of the bank or branch of the foreign bank with any person;
- b) service contracts where the bank or branch of foreign bank is a party to;
- c) any other obligation resulting from the bank or branch of foreign bank being tenant of an immovable property.

10. Within two months of his appointment the liquidator:

- a) shall effect the necessary actions to dissolve all trusts where the bank is a trustee, return the shareholders all assets and properties in the possession of the bank or branch of the foreign bank as a trustee, and close all accounts of such trusts;
- b) sends by recorded delivery, to the addresses in the registers of the bank for the creditors and depositors and clients of the safekeeping service, and guarantor of the properties possessed by the bank a statement of the nature and amount of their claimed debt, according to its registers. There shall be cited in the statement that any objections shall be submitted to the liquidator within a month and requests are effected for the clients of the safekeeping and guaranteeing services to withdraw their properties;
- c) cooperates with the Deposits Insurance Agency for compensation of depositors in accordance with the Law "On deposits insurance".

11. Any property kept in the premises of the bank or branch of foreign bank inside the safes and not withdrawn before the date communicated by the liquidator shall be taken under the possession of the latter as defined by the Bank of Albania.

12. Any unclaimed financial assets possessed by the bank or branch of foreign bank as guarantor together with the respective inventory shall be considered as unclaimed financial assets and shall be taken under the possession of the Bank of Albania, which shall endeavour to identify its true owners.

## **Article 118**

### **Preparation of the accounting balance by the liquidator**

1. The liquidator shall immediately upon his appointment take control of the bank, securing its assets, books and accounts. He shall have undisputable access to all the assets, offices and books of the bank.

2. The liquidator shall carry out the inventory of the assets and properties of the bank and prepare a balance sheet and explanatory report in relation to the balance sheet items of the bank under liquidation, within 30 calendar days of the commencement of liquidation.

3. The liquidator shall submit to the Bank of Albania the balance sheet and the report stipulated in paragraph 2 above, which shall prepare a suitable copy for public consultation.

## **Article 119**

### **Sale of the bank**

1. The liquidator must no later than twelve months from his appointment and depending on the circumstances and deadlines set out in this Law:

- a) enable the purchase of the assets by third parties and focus the separate passives in one or some banks; or
- b) to liquidate the bank's assets as foreseen in this chapter, on the condition that the Bank of Albania approves or refuse this liquidation;
- c) sell the bank;
- d) Negotiates the collective sale of some or all assets of the bank under compulsory liquidation and transfer of a part or all liabilities, including, in any case, the total of insured deposits, to another bank approved by the Bank of Albania.

To sell some or all assets of the bank placed under compulsory liquidation or transfer of a part or all of its liabilities, including in any case the total of insured deposits to another bank according to this point, the approval of shareholders, depositors, creditors or third parties is not required. The sale of some or all assets of the bank placed under compulsory liquidation and transfer of a part or all of the liabilities of the bank, according to this paragraph, is done conform to the principle of equal treatment of creditors. The Bank of Albania approves the transaction for the collective sale of some or all assets of the bank under compulsory liquidation and transfer of a part or all liabilities, including in any case the total of insured deposits, and may set out, in a sublegal act, the selection criteria and procedure for the acquiring bank.

2. The liquidator shall cooperate with the Deposits Insurance Agency for the liquidation of small depositors up to the sum determined in the Law "On deposits insurance"

3. The liquidator shall exercise activities set out in paragraph 1 of this article where in his judgment there is potential for collection of larger sums of the assets of the bank or branch of foreign bank or for the protection of the interests of the depositors or other creditors.

4. For the purposes of effecting the sale of the assets of the bank pursuant to paragraph 1 letter (c) of this Article or for the purpose of enabling the purchase of all main assets by third parties as well as for the concentration of all main passives in one or more banks pursuant to paragraph 1 letter (a) to this article the liquidator shall have the right to allow the reduction of passive value to the extent that in his judgment no other depositor or creditor may receive less than in liquidation.

5. For the determination of the amount of assets that may be provided by the sale of the bank or branch of foreign bank the liquidator must:

- a) assess the alternatives of present values, using realistic discounting rates; and
- b) record the assessment and the expectations upon which his assessment was based

including any expectations in relation to interest rates, percentage of returnable assets, inflation, maintenance cost for the assets and payment of conditional debts.

## **Article 120**

### **Claimed liabilities**

1. All the claimed liabilities for and with regard to the insolvency of the bank or the bank under liquidation, before the liquidator or the Bank of Albania, are made in accordance with the provisions of this chapter.

2. Based on the grounds of the circumstances of the appointment of the liquidator, within 30 days of the appointment of the latter, the right to start legal proceedings at the Court of Appeal requesting the suspension of the liquidation procedures shall be enjoyed by:

- a) one or more shareholders of the bank possessing in total not less than 25% of any class of shares with voting rights.
- b) any person or group of persons possessing at least one-fourth of the total amount of monetary deposits;
- c) creditors amounting to at least one-third of the total amount of claimed debts by other creditors, excluding the depositors.

3. The Court shall carry out its session within 10 days of the deposit of the claim by the claimant. Within twenty days of the preliminary hearing the court shall make a decision on the claim only if:

- a) The Bank of Albania has acted negligently and arbitrarily for the placement under liquidation, based on the factual circumstances and provisions of this Law on compulsory liquidation of the banks;
- b) The Bank of Albania, the liquidator and professional employees appointed to assist the liquidator are responsible or not for the actions or omissions pursuant to the provisions of this Law which determine the manner of discharging the functions and duties in the process of liquidation, except for cases of such acts and omissions being deliberately wrongful.

4. Where the court decides that the Bank of Albania has acted negligently or arbitrarily in the liquidation placement, the sole damages to be granted by the court shall be the monetary damages to be paid by the Bank of Albania. The Bank of Albania shall have the right to reconsider the revocation decision and re-granting of the license.

5. Where the court decides that the Bank of Albania has not acted arbitrarily or negligently in the liquidation placement, the claim shall be dismissed.

6. Despite the judicial review pursuant to this Article, the compulsory liquidation process by the Bank of Albania shall be carried out without restrictions until a decision of the court is issued.

7. Within two months of the last date as set out in the notification pursuant to letter (b) of

paragraph 9 of Article 117 for claimed debts, the liquidator shall:

- a) refuse any claimed liabilities, where it suspects their validity;
- b) determine the amount, if applicable, owned to each known depositor and other creditors, as well as the amount of favourable claimed debt in accordance with the provisions of this Law;
- c) prepare for registration a structure of the acceptable claimed liabilities;
- d) notify each person, whose liabilities has not been fully accepted, by publishing once every three consecutive weeks, in one or more national newspapers a notification of the date and place where the structure of the claimed debt shall be available for public consultation as well as the date, within 15 days of the third publication of such notification, on which the liquidator shall register the claimed liabilities.
- e) cooperates with the Deposits Insurance Agency for the compensation of the depositors in accordance with the Law “On deposits insurance”.

8. Any depositor, creditor or one or more shareholders possessing in total not less than 10 % of any category of shares with voting rights, shall have the right to submit their objection in relation to the registration of late debts to the Bank of Albania, within 20 days of the registration of liabilities structure claimed in accordance with letter (c) of paragraph 7 of this Article.

9. If the objection is accepted the liquidator shall amend and improve the claimed liabilities structure or the proposed actions for debt repayment.

10. After the registration of the claimed liabilities structure, the liquidator shall have the right to partially meet obligations in relation to un-refused or accepted debts from time to time, on the condition that a sufficient reserve is kept for the payment of the refused claimed liabilities.

## **Article 121**

### **The order for debt repayment**

1. Where the bank or branch of a foreign bank shall be liquidated, claimed liabilities secured by assets pledged as collateral, securing charges or financial collateral, shall be repaid in accordance with the terms set out for this purpose, whereas the liabilities for the other accepted claims shall be repaid by preference before all the other debts, in accordance with the following claimed liabilities order:

- a) necessary and reasonable expenses incurred by the liquidator, the Bank of Albania (the Resolution Authority) and the Deposits Insurance Agency for the implementation of the provisions of this law, of the legislation in force on deposit insurance and the legislation in force for the recovery and resolution in banks in the Republic of Albania, in relation to the implementation of resolution instruments or powers or instruments of extraordinary public financial support;
- b) creditors of the new credits granted to the bank or branch of the foreign bank after the selection and appointment of the liquidator;
- c) Unpaid claims on insured deposits by the Deposit Insurance Agency; or the Deposit Insurance Agency for its payments of insured deposits, for which the rights of the insured depositors, who have been paid under the deposit insurance scheme, have been ceded;

- d) the part of the insurable deposit for individuals, entrepreneurs and commercial companies, which exceeds the maximum level of coverage by the deposit insurance scheme, as well as deposits that have not benefited under point “c” of this Article;
  - e) liabilities that are not insured by assets pledged as collateral, securing charges or financial collateral;
  - f) subordinated liabilities, which have contractual clauses for determining them in this repayment order of liabilities, and contain other conditions, defined by the Bank of Albania.
  - g) Capital instruments that are not insured by assets pledged as collateral, securing charges or financial collateral, and are not shares;
  - h) liabilities to shareholders arising from ownership on shares.
2. Any other claimed and valid liabilities left outstanding due to its non- registration within the deadline for the submission of the objection pursuant to paragraph 8 of Article 120 of this Law shall be paid on the basis of the percentage determined by the Bank of Albania after repayment of all secured claimed liabilities and registered claimed liabilities.
3. Any secured claimed liabilities shall be repaid to the extent that it has been secured on the date of its registration in the structure of accepted secured liabilities.
4. Any residual asset after the repayment of all claimed liabilities shall be distributed amongst the shareholders in proportion to their rights and participation in the capital of the bank or branch of foreign bank.
5. Where the residual amount for the repayment of claimed liabilities owned to each group of the order of this article is insufficient for their full payment, such amount will be rendered proportionate to the amounts to be paid.

## **Article 122**

### **Reporting to the Bank of Albania**

1. The liquidator shall report immediately to the Bank of Albania on the completion of the distribution of all the assets of the bank or branch of a foreign bank in the process of liquidation.
2. The Bank of Albania and the liquidator shall have no other liabilities in connection to the bank`s or branch of the foreign bank`s liquidation upon the approval of such report by the Bank of Albania.
3. The liquidator shall report to the Bank of Albania every month on the progress of the liquidation process. These reports shall contain information of the total amount of the claimed liabilities, total amount of sold assets of the bank or branch of the foreign bank and expectation of income from the sale of assets.

## **Article 123**

### **General provisions**

Professional employees, who are appointed by the liquidator for assistance in accordance with the procedures set out in this section and upon the demand for the service, shall not be paid more than the bank's employees for the same services, except where the Bank of Albania has authorized the payment of higher amounts. The Bank of Albania shall give such authorization where it finds that the payment of higher amounts is necessary for recruiting and keeping the necessary personnel.

## **CHAPTER VIII**

### **FINAL PROVISIONS**

#### **Article 124**

##### **Protection of client**

1. The bank or the branch of a foreign bank shall sign agreements or enter into contracts with its client for the services it undertakes to provide.
2. The bank or the branch of a foreign bank, prior to the signing of the agreement or the contract, shall provide the client with all the terms and conditions of the agreement or the contract, clarifying the rights and obligations of the parties to the agreement or contract.
3. The bank or branch of a foreign bank shall inform the client on the terms and conditions of the offered services, in an appropriate place where the banking and financial activity is carried out.
4. The bank or branch of a foreign bank shall initially announce and inform its clients in relation to the conditions of the granted credit about:
  - a) the annual percentages of good and bad credits;
  - b) the method of calculation of interest;
  - c) the amount of the principal and interest to be paid for the respective credit, repayment time limits, the number and amount of instalments;
  - d) the terms and conditions of deposits, in cash, to be used as pledge for the credit;
  - e) possibilities and conditions for covering the obligation of the credit with the deposit in cash as a guarantee for the credit;
  - f) types of collateral;
  - g) other conditions.
5. The bank shall inform the client on the terms and conditions of the deposits, in relation to:
  - a) the actual interest percentage;
  - b) the methodology of interest calculation;
  - c) the conditions in the event of change in interest percentage;
  - d) the effective interest percentage in the event of cancellation of monetary deposit;
  - e) basic information on deposit insurance, in accordance with the Law "On deposits insurance".

6 The bank shall inform its clients, as previously agreed, but not less than once a year on the rights and their obligations to the bank.

7 The bank notifies in writing all its clients before their application, if interest rates are variable. The notification is also made through means of mass communication.

8 The Bank of Albania may envisage, through sublegal acts, other requirements and criteria on consumer protection, concerning banking and financial activities stipulated in this law.

## **Article 125**

### **The protection of secrecy of information of the client**

1 The bank or branch of foreign bank shall protect the secrecy of information on the client and shall not utilize it for its own benefit or benefit of third parties, which it has served or serves, pursuant to provisions of Article 91 and the criteria defined by the Bank of Albania through its by-laws.

2 The obligation of the bank or branch of the foreign bank to protect the secrecy of information of the client, as stipulated in paragraph 1 of this Article, shall be part of the agreement or the contract stipulated in paragraph 2 of Article 124.

## **Article 126**

### **Non-bank financial subjects**

1 Non-bank financial subjects shall be established and organised pursuant to the Law “On commercial companies”.

2 The Bank of Albania, having due consideration to the specifics of the financial activity exercised by these subjects, shall decide their rules of licensing, supervision and functioning, through its by-laws, except where this Law specifically stipulates that it applies to such subjects.

3 The Bank of Albania shall, if it deems reasonable, supervise the non- bank financial subjects through the process of licensing, regulation, analysis and on-site supervision.

4 The non-bank financial subjects shall report to the Bank of Albania the required information according to its type, way, frequency and time-limits defined by the latter.

## **Article 127**

### **The credit registry**

1 The Bank of Albania maintains the Credit Registry with information on loans that banks and foreign bank branches grant to their clients and on the credit risk in the banking and financial system.

2. The bank and branch of the foreign bank, shall report to the Bank of Albania all the required information from the latter for the purposes of credit registry.
3. The banks and branches of the foreign banks report to the Bank of Albania, for the purposes of the credit registry, all the information stipulated in paragraph 2 of this Law for all outstanding credits extended prior to the entrance into force of this Law.
4. The type of information, way and frequency as well as time-limits of reporting of the information stipulated in paragraph 2 and 3 shall be decided by the Bank of Albania through its by-laws.
5. Banks and branches of foreign banks shall have the right to request and use the information maintained with the credit registry, in accordance with the procedure determined through by-laws of the Bank of Albania.
6. The protection and use of the information in the credit registry shall be done in compliance with the legislation in force on protection and processing of personal data, as well as by-laws issued by the Bank of Albania.
7. Banks or branches of foreign banks shall exchange information with respect to the credits they extend to their customers pursuant to an agreement amongst them, and in compliance with the provisions of this Law and other applicable laws.
8. The Bank of Albania, with sublegal acts, may oblige other subjects supervised by it, to report for the purposes of requirements related to the Credit Registry, in accordance with the provisions of this Article. Other financial institutions not supervised by the Bank of Albania may also report to the Credit Registry, according to the relevant agreements signed between the Bank of Albania and these institutions and/or their regulatory authorities.

## **Article 128**

### **The register of licensed subjects**

1. The Bank of Albania shall maintain a register for public consultation enlisting all the subjects licensed by it, in which it is included:
  - a) the name;
  - b) address of legal seat, and the address of the branch or agency, if applicable;
  - c) names of administrators;
  - d) list of the names of the shareholders, when applicable
2. The register shall also include:
  - a) a copy of the articles of association and statute;
  - b) a copy of the license granted by the Bank of Albania;
  - c) a copy of the decision of registration in the court.
3. A copy of the register shall be maintained for public consultation in every regional

representative office of the Bank of Albania.

4. The documents pertaining to subjects whose license has been revoked shall be removed from the register. A list of these subjects is maintained in the register specifying their license revocation.

## **Article 129**

### **Electronic systems of payment**

1. The Bank of Albania and the banks or branches of foreign banks may participate in electronic systems of payment in accordance with this Law and by-laws implementing it.

2. The order for a transfer sent through electronic means shall be the same to an order sent in writing. An order shall be an instruction to transfer the funds to the advantage of the beneficiary, on the condition that it has been issued by an authorized person and accepted by an executing institution. The Bank of Albania, a bank or branch of a foreign bank shall be the only executing institution in cases of non-cash transfers.

3. An order to an electronic system of payments shall imply, every instruction given in an electronic way by a participant of the payments system, for the transfer of the funds, as well as for the execution of the settlement in accordance with rules of the system.

4. Following acceptance of the order by the system according to the rules of the system, the order may not be revoked neither from any participant of the system, nor from any third party. The execution of the order by the system may not be suspended in any other way.

5. The settlement shall be the transfer of the funds between the accounts that the bank or branch of the foreign bank maintain in the Bank of Albania. The settlement of the payment shall be made through the real time gross settlement system.

6. The activity of the payment systems and their participants shall be regulated through by-laws of the Bank of Albania, and agreements entered into by the Bank of Albania with subjects exercising banking activity in the Republic of Albania.

## **Article 130**

### **Tax duties**

The bank shall pay all tax duties foreseen by the legislation in force.

## **Article 131**

### **The relationship of the bank or branch of the foreign bank with connected persons to it**

1. The bank or branch of the foreign bank shall not exercise banking or financial activity to the benefit of persons connected to it if the activity is carried out in more favourable

conditions and terms to those applied to regular customers of the bank

2. The bank or branch of the foreign bank shall not extend credits for and to the benefit of connected persons to it, if the sum of the remainder of all the extended credits by the bank or branch of the foreign bank for persons connected to it, shall exceed the sum of the regulatory capital defined by the Bank of Albania in its by-laws.

3. The Bank of Albania shall define through by-laws the limitations and conditions of the credit of the bank or branch of the foreign bank for the connected persons to it.

### **Article 132**

#### **Legal protection in the exercise of the duties**

1. The Bank of Albania, members of the Supervisory Council, Administrators and its employees are not responsible for the damages caused to third parties by the actions or omissions when exercising their duties and fulfilling their legal obligations determined in the organic law of the Bank of Albania and in this Law.
2. Notwithstanding paragraph 1 above, employees of the Bank of Albania, may be accountable for the damage caused to natural persons, as well as private legal persons when it is proved that they acted in bad faith.
3. The Bank of Albania, pursuant to cases stipulated in paragraph 2 of this Article, following the indemnification of the injured party, may request from the guilty employee the amount of the paid out indemnification.
4. The Bank of Albania, in case of the respondent employee stipulated in paragraph 2 of this Article, is declared innocent by a final decision of the competent court, is obliged to reimburse to the employee the full amount of the expenses spent to realise his legal representation.
5. The provisions of Law nr.8510, dated 15.07.1999 “On non-contractual responsibilities of the organs of state administration” are not applicable for the purposes of defining the non-contractual responsibilities of the Bank of Albania, as well as its organs and employees.

### **Article 133**

#### **Decisions as executive titles**

The administrative acts of the Bank of Albania issued pursuant to this Law, which determine penalizing measures bearing financial obligations, shall be executive titles, and the Enforcement Office shall be in charge of their execution.

### **Article 134**

#### **Transitory dispositions**

1. The subjects licensed by the Bank of Albania prior to entering into force of this Law shall be considered as licensed in accordance with this Law.
2. The Bank of Albania may require the subject to submit additional information if it holds that the information submitted during the process of the granting of the license is not adequate and sufficient.
3. The requests submitted to the Bank of Albania for the granting of license to exercise banking activity, prior to entering into force of this Law, as well as the subjects which have been notified by the Bank of Albania to have successfully submitted all the necessary documentation pursuant to Law nr. 8365, date 02.07.1998 “On banks on the Republic of Albania”, shall be considered according to the dispositions of Law Nr. 8365, date 02.07.1998 “On banks in the Republic of Albania”.
4. All the by-laws issued by the Bank of Albania in implementing Law nr.02.078.1998 “On banks in the Republic of Albania” are applied to the extent that they do not contradict with this Law, until their substitution with other by-laws in implementing this Law.

#### **Article 135**

#### **Abrogative provision**

Law Nr. 8365, date 02.07.1998 “On banks in the Republic of Albania” shall be abrogated.

#### **Article 136**

#### **Entry into force**

This Law shall enter into force in June 1, 2007.

Decreed by the President of the Republic of Albania Alfred Moisiu Decree No. 5178 dated 12.1.2007