

LAW OF UKRAINE
ON BANKS AND BANKING ACTIVITY
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Part I. General Provisions

Chapter 1. General Provisions

Article 1. Object and Purpose of the Law

This Law defines the structure of the banking system, the economic, organizational and legal basis for the establishment, operation, reorganization and liquidation of banks.

The Law is aimed at guaranteeing the stable development and activity of the banks in Ukraine, and creating with the same goal an appropriate competitive environment on the financial market, protecting the legal interests of depositors and clients of the banks, creating favorable conditions for the development of Ukraine's economy and support of the domestic commodity producer.

Article 2. Definition of Terms

The terms used in this Law shall have the following meaning:

"Underwriting" means purchase of securities on the primary market with their further resale to investors; signing of a contract, which guarantees full or partial sale of issuer's securities to investors as to their full or partial redemption at a fixed price with further resale, or oblige the buyer to do everything in his power in order to sell as many securities as possible without taking the obligation to purchase any of the unsold securities.

"Affiliate of a bank" means any legal entity in which a bank holds an essential participation or which holds an essential participation in the bank.

"Bank" means a legal entity, which has the exclusive right, on the basis of the license of the National Bank of Ukraine, to perform the following banking operations in aggregate: deposit-taking activity in respect to the funds of individuals and legal entities, and placement of these funds on its own behalf, own conditions and at its own risk, opening and servicing of the accounts of individuals and legal entities.

"Bank with foreign capital" means a bank where the share of capital, belonging to a least one non-resident, exceeds 10 percent.

"Banking activity" means deposit-taking activity in respect to the funds of individuals and legal entities and placement of these funds on its own behalf, own conditions, and at its own risk, opening and servicing of the accounts of individual and legal entities.

"Bank credit" means any commitment of the bank to extend a certain sum, any guarantee, any obligation to procure the right to claim debts, and any extension of debt maturity, which is extended in exchange for commitment of borrower to return the indebted sum, as well as obligation to pay interest and other fees thereof.

"Banking license" means document issued by the National Bank of Ukraine in the procedure and under conditions specified in the present Law, and upon the basis of which the bank has the right to perform banking activity.

"Banking payment instrument" means an instrument containing the data, which identify the issuer thereof, the payment system, in which it is utilized and, as a rule, the holder of this banking payment instrument. Relevant documents are formed with the help of banking payment instruments for transactions, performed using the banking payment instruments, on the basis of which funds are transferred or other services are rendered to holders of banking payment instruments.

"Bank accounts" means accounts registered on which are own funds, claims, commitments of the bank in relation to its clients and contra parties, and which allow to carry out transfer of funds with the aid of banking payment instruments.

"State Bank Register" means register kept by the National Bank of Ukraine and containing information on State registration of all banks.

"Deposit" means funds in cash or non-cash form in the currency of Ukraine or foreign currency, which are placed by clients into their private accounts with the bank under contractual basis for a specified length of deposit or without the specification of such a length of deposit, and are subject to repayment to the depositor in conformity with the effective legislation of the Ukraine and terms of the contract.

"State registration of a bank" means provision of a bank with legal entity status in accordance with requirements of Chapter 3 of the present Law.

"Business reputation" means a complex of confirmed information about a person, which allows to make a conclusion on professional and managerial skills of such a person, his/her trustworthiness and adequacy of his/ her activity to the requirements of the present Law.

"Economic norms" mean indicators, which are established by the National Bank of Ukraine and which are compulsory for the banks.

"Identification of a person" means determination on the grounds of identification documents and written fixation of the surname, name, date of birth and address of the person, making the deal, as well as the name, number and date of issue of the presented document, as well as the name of the institution, which issued this document.

"Foreign" refers to a citizen or legal entity of any country other than Ukraine.

"Essential participation" means either direct, indirect, independent or joint holding of 10 or more percent of the authorized capital or the voting right of the legal entity or the ability to exercise decisive influence over the management or activity of a legal entity irrespective of formal ownership.

"Capital of a bank" means a residual value of bank assets after deduction of all its liabilities.

"Subscribed capital" means the amount of capital for which written commitments were received from bank shareholders (stockholders) for the contribution of funds under subscription to shares (stock).

"Authorized capital" means the registered subscribed capital.

"Regulatory capital (own funds)" is made up of the fixed and supplementary capital, risk weighed, which is determined by normative acts of the National Bank of Ukraine.

"Client of a bank" means any individual or legal entity, who uses the services of the bank.

"Control" means direct or indirect holding of a share in legal entities, individuals or jointly with other persons, which is equivalent to 50 or more percent of the authorized capital or votes of legal entities, or possibility to exert dominating influence on the management or activity of legal entities, on the basis of an agreement of any other manner.

"Funds" mean money in the national or foreign currency or their equivalent.

"Bank creditor" means a legal entity or individual that has written confirmation of a claim to the borrower as to his property commitments.

"Liquidation of a bank" means a procedure for terminating the operation of a bank as a legal entity in accordance with the provisions of the present Law.

"Liquidator" means a legal entity or individual, which/who performs functions as to the termination of the bank's activity and satisfaction of the creditors' demands.

"Liquidation mass" means all types of property assets (property and property rights) of the bank, which are in its possession on the day of the opening of liquidation procedure and revealed during the liquidation.

"Moratorium" means suspension of a bank's fulfilment of property commitments, as well as obligations as to the payment of taxes and fees (mandatory payments), the maturity of which become due prior to the introduction of the moratorium, and suspension of measures directed at ensuring the fulfillment of these commitments and obligations as to the payment of taxes and fees (mandatory payments), applied prior to the adoption of a decision on the introduction of the moratorium.

"Bank insolvency" means the inability of the bank to timely and in full measure fulfil the legal claims of the creditors due to the absence of funds or decrease in the size of bank capital to the sum, which makes up less than one-third of the minimum size of the regulatory capital of the bank.

"Normative acts of the National Bank of Ukraine" means normative acts issued by the National Bank of Ukraine within its jurisdiction for fulfilment of this or that law of Ukraine.

"Bank subdivision" means a structural unit of the bank, which does not have the status of legal entity and executes functions, defined by the bank.

"Representative office of a bank" means a separate territorial structural subdivision of a bank which does not perform banking activity.

"Reorganization of a bank" means merger, consolidation, separation or devision of a bank, transformation of the its organizational and legal form resulting in transfer, acceptance of its property, funds, rights and commitments by legal successor banks

"Banking settlement operations" mean movement of funds on deposit, carried out in accordance with instructions of the clients or resulting from actions, which have led to legal transfer of the assets ownership rights.

"Related party" means a legal entity, which/who has holders of essential participation common with the bank.

"Systemic bank" means a bank, the commitments of which make up not less than 10 percent of the total commitments of the banking system.

"Provisional administration" means a procedure that is applied by the National Bank of Ukraine in the course of bank supervision under the circumstances stipulated by the present Law.

"Provisional administrator" means an individual or legal entity, appointed by the National Bank of Ukraine to exercise provisional administration.

"Bank's authorized person" means a person, who, on the basis of a statute or agreement, has been empowered to represent the bank and take certain actions of legal nature on the behalf of the bank.

"Participants of the bank" mean bank founders, shareholders of a bank, which is a joint stock company, participants (stockholders) of a bank, which is a limited liability company, and of a cooperative bank

"Branch office" means a separated structural subdivision of a bank, which does not have the status of legal entity and performs banking activity on behalf of the bank.

"Finance holding group" means a financial institution that meets the demands of Article 12 of the present Law.

Article 3. Application of the Law

The present Law regulates relations that appear during establishment, registration, activity, reorganization and liquidation of banks.

The provisions of the present Law shall be applied to the representative offices of foreign banks operating on the territory of Ukraine, unless otherwise established by effective international agreements (contracts), ratified by the Verkhovna Rada of Ukraine, as well as to branches of Ukrainian banks abroad and to bank related parties specified in Article 52 of the present Law.

Correspondent provisions of the present Law shall also be applied to some liabilities and responsibilities of other persons, whose activity is connected with the operation of banks.

Article 4. Banking System of Ukraine

The banking system of Ukraine consists of the National Bank of Ukraine and other banks, which have been established and operate on the territory of Ukraine in accordance with provisions of the present Law.

Banks in Ukraine may operate as universal or specialized institutions. The banks, as to their specialization, may be classified as savings, investment, mortgage and settlement (clearing) banks.

A bank shall independently determine the trends of its activity and specialization as to types of operations. The National Bank of Ukraine shall regulate the activity of specialized banks through economic norms and normative provision of operations performed by these banks.

A bank shall acquire the status of specialized bank when over 50 percent of its assets represent assets of the same type. A bank shall acquire the status of specialized savings bank when over 50 percent of its liabilities represent the deposits of physical persons.

The National Bank of Ukraine shall execute regulation and supervision in accordance with provisions of the Constitution of Ukraine, the present Law, the Law of Ukraine "On the National Bank of Ukraine," other legislative acts and own normative acts.

Article 5. Economic Independence of Banks

Banks shall have the right to independently hold, utilize and manage property owned by them.

The State shall not be held responsible for the commitments of banks, and banks shall not be held responsible for the commitments of the State, unless otherwise provided by the legislation of Ukraine or contract.

The National Bank of Ukraine shall not be held responsible for the commitments of banks, and the banks shall not be held responsible for the commitments of the National Bank of Ukraine, unless otherwise provided by contract or law of Ukraine.

It is prohibited for bodies of state power and local self-government to in any way influence the management or employees of banks in the course of execution of their official duties or to interfere with bank activity, except for cases specified by Laws of Ukraine.

Harm, inflicted on the bank as a result of such interference, shall be subject to compensated in the procedure specified by laws of Ukraine.

Article 6. Organizational and Legal Form of a Bank

In Ukraine banks are founded in the form of joint stock companies, limited liability companies or a cooperative bank.

Legislation on the economic entities shall be applicable to banks in the part, which does not contradict the present Law.

Article 7. State Banks

A State bank is a bank, whereby the state holds 100 percent of the authorized capital.

A State bank can be established upon a decision of the Cabinet of Ministers of Ukraine. Herein, expenditures shall be foreseen in the draft law on the State Budget of Ukraine for the formation of the authorized capital of the State bank, The Cabinet of Ministers of Ukraine shall be obliged to obtain a positive conclusion of the National Bank of Ukraine in respect to the founding of a State bank. Obtaining a conclusion of the National Bank of Ukraine shall be obligatory in case of the liquidation (reorganization) of a State bank, with the exception of liquidation resulting from insolvency thereof.

The Statute and activity of a State bank must correspond to the requirements of the present Law, Laws of Ukraine and normative acts of the National Bank of Ukraine.

The State bank statute shall be approved by a Resolution of the Cabinet of Ministers of Ukraine.

The National Bank of Ukraine shall register State banks in accordance with the requirements of the present Law and own normative acts of the National Bank of Ukraine.

The State shall carry out and realize ownership rights as to shares (stock), which belong to it in the authorized capital of the State bank through management bodies of the State bank.

The Supervisory Council and Board shall be the management bodies of the State bank.

Controlling body of the State bank shall be the Auditing Committee. The Supervisory Council of the State bank shall appoint the membership of the Auditing Committee.

The Supervisory Council is the highest body of management of the State bank, which supervises bank Board activity with the aim of preserving the funds attracted into deposits, guaranteeing their return to depositors and protection of State interests as shareholder of a State bank and other functions stipulated by the present Law.

The composition of the State bank Supervisory Council shall be made up of members of the bank Supervisory Council, appointed by the Verkhovna Rada of Ukraine and the President of Ukraine. People's Deputies of Ukraine, representatives of bodies of executive power and other persons that meet the demands set forth in this Article can be included in the Supervisory Council of the State bank in order to represent the interests of the State. The term of the authority of State bank Supervisory Council members shall be five years.

The President of Ukraine shall appoint seven members to the State bank Supervisory Council through the adoption of a respective Edict.

The Verkhovna Rada of Ukraine shall appoint seven members to the State bank Supervisory Council through the adoption of a respective Resolution.

Members of the State bank Supervisory Council can be citizens of Ukraine that have a higher economic or judicial education, or a scientific degree in the field of economy, finances and/or the law, in addition to work experience in bodies of legislative power or held managerial posts in central executive bodies of Ukraine, or banking institutions, or experience of scientific and practical work of economic, financial or judicial nature.

Members of the State bank Supervisory Council shall fulfil their functions without receiving any material remuneration.

A Chairman elected by the Supervisory Council from among its members shall head the State bank Supervisory Council.

10 members of the Supervisory Council shall constitute the quorum.

Supervisory Council decisions shall be adopted by a majority of votes of those present at the sitting of the State bank Supervisory Council members.

Internal issues pertaining to organizational activity of the State bank Supervisory Council and business matters shall be determined by provisions on the Supervisory Council, adopted at its sittings.

The power of the appointed State bank Supervisory Council composition and/or each of its members can be terminated upon the decision of the Verkhovna Rada of Ukraine and the President of Ukraine as to appointed persons thereof, but not earlier than one year after appointment. In case a provisional administrator is appointed for a State bank the power of the Supervisory Council shall be suspended in compliance to Article 78 of the present Law.

The State bank Supervisory Council shall be guided in its activity by the effective legislation of Ukraine, the present Law and State bank Statute. The Supervisory Council shall not interfere into the operational activity of the State bank.

Included into the competence of the State bank Supervisory Council shall be the adoption of decision on issues set forth in p. 1), 5) and 6) of Article 38 and p. 1) - 7) of Article 39 of the present Law, as well as other issues set forth in the present Law that are necessary for the regulation.

Decision on changing the size of the State bank authorized capital and suspension of its activity shall be taken by the Cabinet of Ministers of Ukraine. Herein the Cabinet of Ministers of Ukraine shall be obliged to receive a positive conclusion from the National Bank of Ukraine on the intention to change the size of the State bank authorized capital.

The power of executive body of a State bank shall be determined by the statute thereof. Candidates for the post of Chairman and members of the executive body shall be coordinated with the National Bank of Ukraine in accordance with requirements of the present Law.

The bank, established according to the procedure set forth in par 2 of this Article, has a right to add the word "State" to its name and to use the imprint of the Emblem of Ukraine and the State Flag of Ukraine.

In case a decision is taken by the State on the partial or complete alienation of shares (stock) thereof in the State bank, such a bank shall be deprived of the status of State bank. Shareholders shall be obliged to bring its status and activity into conformity to the demands of this Law and normative acts of the National Bank of Ukraine.

Article 8. Cooperative Banks

A cooperative bank shall be established in the procedure set forth in the present Law. Legislation on cooperation shall be applied to cooperative banks in the part, which does not contradict the present Law.

Cooperative banks shall be established according to territorial principle and divided into regional and central cooperative banks.

The minimal number of participants of a regional (within the oblast) cooperative bank can not be less than 50 persons. If this number tends to drop and the cooperative bank is unable to replenish the number to the minimum required level within one year, the activity of this bank should be terminated through changing of its organizational and legal form or by liquidation.

Regional cooperative banks shall be participants of the central cooperative bank.

Attributed to the functions of the central cooperative bank, in addition to those set forth in the present Law, shall be the function of centralization and redistribution of resources, accumulated by regional cooperative banks, as well as supervision over the activity of regional cooperative banks.

The General Meeting of participants (shareholders), the Supervisory Council and the Board of Directors shall be the management bodies of a cooperative bank. The auditing committee shall be the control agency. The management body and control agency of a cooperative bank shall be set up and exercise its powers in accordance with the present Law.

The authorized capital of a cooperative bank shall be divided into shares. The minimal size of the cooperative bank authorized capital shall be established by the National Bank of Ukraine in conformity with the present Law.

Each cooperative bank participants shall have the right to one vote irrespective of the size of their participation in bank capital (stock).

Cooperative bank profits or losses as to results of the fiscal year shall be divided among participants in proportion to the size of their share.

Restrictions, established by the present Law on bank operations with related parties shall not be applicable to operations of a cooperative bank.

Article 9. Bank Associations

The banks shall have the right to set up bank associations of the following types: bank corporation, bank holding group and financial holding group. Banks can participate in industrial/financial groups with adherence to demands of antimonopoly legislature of Ukraine.

Bank associations shall be set up upon preliminary agreement with the National Bank of Ukraine and subject to State registration by making a corresponding entry into the State Bank Register.

The procedure for receiving permit for the setting up a bank association and procedure for its registration by the State is established by the National Bank of Ukraine.

A bank can participate in only one bank association. Participants of a bank association shall indicate the name of the bank association before their own names.

Participants to a bank association shall have the right to leave the association maintaining their mutual commitments and concluded contracts with other economic entities.

A bank association shall be obliged to publish information in official periodicals on the setting up of a bank association using the form approved by the National Bank of Ukraine, and on changes therein and on termination of activity thereof, as well as consolidated statements following the form and scope established by the National Bank of Ukraine.

Participants of a bank association shall be held responsible for obligations of its other participants in accordance with the agreement concluded by them.

A bank association shall be liquidated according to a decision of its participants or upon the initiative of the National Bank of Ukraine following a court order in case its activity contradicts antimonopoly legislation, or presents a threat to the interests of bank depositors or stability of the banking system. The liquidation of the bank association shall not terminate the activity of banks - its participants.

Article 10. Bank Corporation

A bank corporation is a legal entity (bank), the founders and shareholders of which can be exclusively banks. A bank corporation is set up with the aim of concentrating the capital of banks - participants of the corporation, raising their general liquidity and solvency, as well as providing coordination and supervision over their activity.

A bank corporation shall be subject to registration at the National Bank of Ukraine and entry into the State Bank Register. The authorized capital of a bank

corporation shall meet the general requirements of the National Bank of Ukraine, pertaining to authorized capital of a newly established commercial bank.

The demands of the National Bank of Ukraine on granting licenses to bank corporation for certain operations shall be established on the basis of general demands for commercial banks, proceeding from the size of consolidated capital.

The foundation agreement and statute of the corporation shall include provisions for ensuring the fulfillment by the corporation and its members of financial commitments and obligations as to results of joint activity with the aim of guaranteeing the interests of creditors and depositors.

Banks, which became members of a bank corporation, shall delegate powers to the corporation to perform certain operations and ensure centralization of the fulfillment of certain functions. The following are subject to centralization within the bank corporation:

- Settlements both among corporation members and beyond its framework.
- Operations on money and capital markets.
- Establishment and keeping of correspondent accounts (in the national and foreign currency).
- Monitoring of credit risks.
- Development and adoption of general rules for banking corporation members and procedures for performance of operations and internal accounting.
- Formation of external accounting.
- Internal auditing.

The list of centralized functions may be extended upon agreement of member banks. The transfer of power as to centralized performance of the above-mentioned functions from the bank to the bank corporation, shall be registered both in the statutes of corporation member banks as well as in the statute of the bank corporation itself.

The bank corporation performs the functions as settlement center for corporation member banks, and does not perform direct servicing of clients (individuals and legal entities, with the exception of banks and other financial institutions). All corporation member banks shall perform their settlements and payments (both in the national as well as in foreign currency) exclusively through their correspondent accounts, opened with the National Bank of Ukraine or directly with the bank corporation.

Banks, which became participants of the bank corporation, shall preserve their legal independence within the limits, specified in their statutes and the statute of the bank corporation. Banks, which became participants of the bank corporation, cannot become participants of other bank associations, except with the agreement of the corporation (an exception is participation in professional associations, set up on non-commercial basis). Banks, which became participants of the bank corporation, shall indicate corporation membership in all their documents, concluded agreements, etc.

The name of the bank corporation shall be determined by the group founders ad libitum in compliance with requirements of the present Law

Article 11. Bank Holding Group

A bank holding group is a bank association, which consists exclusively of banks.

The parent bank of the bank holding group shall own at least 50 percent of the share (stock) capital or votes of each of the other group participants that are its subsidiary banks.

A subsidiary bank cannot hold shares of the parent bank. In cases, when the subsidiary bank obtains ownership rights on parent bank shares, it shall be obliged to alienate them within one month.

Bank holding groups can only be set up under condition that the foundation agreement stipulates the placement of additional organizational functions on the principal bank of the group with respect to the group member banks, as well as establishment of joint activity management system.

Banking supervision over the activity of the bank holding group shall be carried out on an individual and consolidated basis. The parent bank shall be obliged to submit consolidated, financial and statistical reports of the group in accordance with the demands of the present Law.

The parent bank of the bank holding group shall bear responsibility for the commitments of its members within the limit of its contribution to the capital of each of them, unless otherwise provided by concluded agreements thereof or legislation.

Article 12. Financial Holding Groups

A financial holding group shall consist predominantly or exclusively of institutions that render financial services, including at least one bank. The parent company must be a financial institution.

The parent company shall own more than 50 percent of the share (stock) capital of each financial holding group participants.

The financial holding group parent company shall be obliged to submit consolidated, financial and statistical reports of the group to the Supervisory Council in accordance to the demands of the present Law.

The financial holding group parent company shall have the right, in the course of execution of its activities in respect to management and coordination of activities of the members thereof for fulfillment of legislation and normative acts of the National Bank of Ukraine, to establish rules that are binding for members of the financial holding group.

The financial holding group parent company shall be held responsible for obligations of all its members within the limit of its contribution into the capital of each of them, unless otherwise provided by the concluded agreement thereof or legislation.

Article 13. Bank Unions and Associations

In order to protect and represent the interests of its members, the development of interregional and international relations, ensure scientific and information exchange and professional interests, development of recommendations related to banking activities, the banks shall have the right to set up non-profit unions or associations.

Unions or associations shall not have the right to perform banking or entrepreneurial activity, and cannot be established in order to receive profit.

The association (union) of banks is a contractual association of the banks, which does not have the right to interfere with the activity of member banks of the association (union).

Part II. Establishment, State Registration, Activity Licensing and Reorganization of Banks

Chapter 2. Establishment of Banks

Article 14. Bank Participants

Resident and non-resident legal entities and individuals, as well as the state in the person of the Cabinet of Ministers of Ukraine or its authorized bodies can be participants of a bank.

Holders of essential participation in a bank must have an irreproachable business reputation and a satisfactory financial position.

Demands as to business reputation and satisfactory financial position of founders and shareholders (stockholders) that are going to be essential participation holders in the bank are established by the present Law and normative acts of the National Bank of Ukraine.

Legal entities, in which the bank has essential participation, as well as public associations and charity organizations cannot become bank participants.

Article 15. Name of a Bank

A bank shall have a full and abbreviated official name in Ukrainian and in a foreign language. The bank name shall contain the word "bank," as well as a reference to the organizational and legal form of the bank.

A bank shall have a seal with its full official name.

The word "bank" and words derived from it can only be used only in the name of those legal entities that are registered by the National Bank of Ukraine as a bank and have a banking license. An exception is made for international organizations, which operate on the territory of Ukraine in conformity with international agreements, ratified by the Verkhovna Rada of Ukraine and the effective legislation of Ukraine.

It is not allowed to use a bank name, which repeats the name of an existing bank or misleads about the types of activity the bank performs. The use of the words "Ukraine", "State", "Central", "National" and derivatives thereof in the name of a bank is possible only upon agreement with the National Bank of Ukraine.

The National Bank of Ukraine shall have the right to refuse the usage of the proposed name of the bank due to reasons, set forth in this Article.

A bank subdivision shall only use the name of the bank of which it is a subdivision. The name of the location of this subdivision can be added to the name of the bank structural division.

Article 16. Bank Statute

The statute of a bank shall be drawn up taking into account the provisions of the present Law, the Law of Ukraine "On Economic Entities" and other laws of Ukraine.

The bank statute shall include the following information:

- 1) The name of the bank.
- 2) The location of the bank.
- 3) The organizational and legal form.
- 4) Type of operations to be performed by the bank.
- 5) The size and procedure for formation of the authorized bank capital, type of bank shares, their face value, form of share issuance (documentary or non-documentary) number of shares to be bought by the shareholders.
- 6) The structure of the bank management, management bodies, their competence and procedure of decision taking.
- 7) The procedure for the reorganization and liquidation of the bank in accordance with Chapters 5 and 17 of the present Law.
- 8) The procedure for introducing changes and amendments to the bank statute.
- 9) The size and procedure for formation of reserves and other pools of the bank.
- 10) The procedure for distributing profits and covering losses.
- 11) The provisions on conducting audits.
- 12) The provisions on bodies of internal auditing.

A decision on the introduction of changes and amendments to the bank statute becomes valid at the moment these changes and amendments are registered by the National Bank of Ukraine.

Registration of changes and amendments to the bank statute shall be performed according to the procedure established by the National Bank of Ukraine.

Chapter 3. State Registration and Licensing of Banks

Article 17. State Registration of Banks

The state registration of banks shall be conducted by the National Bank of Ukraine in accordance with the requirements of the present Law, as well as NBU normative acts.

Persons empowered by bank founders shall submit the following documents for State registration to the National Bank of Ukraine:

- 1) Registration application.
- 2) Foundation Agreement (with the exception of State bank).
- 3) Bank statute.
- 4) Decision on bank establishment (minutes of the foundation meeting), Resolution of the Cabinet of Ministers on the establishment of a State bank.
- 5) Business plan for the following year and activity strategy of the bank for the next three years, in accordance with requirements, established by the National Bank of Ukraine that specifies the activities that the bank plans to perform.
- 6) Information on financial status of those participants that will hold an essential participation in the bank. In case the bank founder is a legal entity, information should be provided on members of the Board of Directors and holders of essential participation in this legal entity.
- 7) Accounting and financial statements for legal entities on the past four reporting periods (quarters), and for individuals - a statement from the State Tax Administration on income for the last reporting period (year).
- 8) Information on the membership of the Supervisory Council, Management (Board of Directors), and Auditing Committee.
- 9) Copy of the receipt certifying payment of registration fee established by the National Bank of Ukraine.
- 10) Notarized copies of foundation documents of members, that are legal entities and would hold essential participation in the bank.
- 11) Copies of a report on the holding of open subscription to shares - for a bank established as an open joint stock company.
- 12) Data on professional skills and business reputation of the bank Chairman and members of the Management (Board of Directors) and the Chief Accountant of the bank.

The National Bank of Ukraine, within one week after the documents for state registration were submitted, shall open a temporary account for the accumulation of subscription fees of the founders and other bank participants.

The decision on state registration or denial of registration shall be taken by the National Bank of Ukraine not later than within three months from the moment the full package of documents, specified in this Article, was submitted.

The National Bank of Ukraine has the right to require correction of deficiencies in the submitted documents.

The registration of banks is performed through a relevant entry in the State Bank Register. After that a bank shall acquire the status of legal entity.

The National Bank of Ukraine shall issue a State Registration Certificate to the bank in the form established thereof.

Article 18. Grounds for State Registration Denial

The National Bank of Ukraine can refuse to register the bank in the following cases:

- Violation of bank establishment procedure.
- The foundation documents of the bank fail to comply with the legislation of Ukraine.
- An incomplete package of documents necessary for State registration was submitted, or these documents failed to meet the requirements of the present Law or NBU normative acts.
- The National Bank of Ukraine has evidence proving the lack of impeccable business reputation or absence of satisfactory financial status of at least one of the founders that holds essential participation in the bank.
- Professional skills and business reputation of the Chairman of the executive body and Chief Accountant of the bank, as well as members of the bank executive body, fail to meet the requirements of the National Bank of Ukraine.

The National Bank of Ukraine shall be obliged to inform the bank's authorized persons on incompleteness of document package and/or the inadequacy of professional skills and business reputation of the Chairman (Board of Directors) and Chief Accountant not later than one month from the day the documents were submitted.

The National Bank of Ukraine shall take a motivated decision on the denial to register the bank. A copy of the decision on the denial to register a bank, certified by the National Bank of Ukraine, shall be sent to the bank's authorized person by a recommended letter or signed for upon delivery.

The denial to register a bank cannot be made on grounds other than those listed in this Article.

Article 19. Banking License

A bank has a right to carry out banking activity only after obtaining a banking license.

Not a single person shall have the right to simultaneously engage in deposit-taking and other repayable funds, extending loans and servicing accounts without a banking license. Persons, guilty of carrying out banking activity without a banking license, shall bear criminal, civil or administrative responsibility in accordance with the laws of Ukraine.

A banking license shall be issued by the National Bank of Ukraine upon the petition of a bank, provided that there are the documents confirming the following:

The existence of paid in and registered subscribed bank capital in the amount, established by the present Law.

The bank has appropriate banking equipment, computers, software and premises in compliance with NBU requirements.

There are at least three persons, appointed the members of the Management (Board of Directors) of the bank, who have the education and experience necessary to manage the bank.

The National Bank of Ukraine can refuse to issue a license if the bank fails to fulfil the conditions set forth in this Article within one year from the date of state registration. In this event the state registration of the bank will be abolished and the bank liquidated.

The decision to grant or to deny a banking license shall be taken by the National Bank of Ukraine within one month from the day it receives a full package of the documents listed in this Article.

The banking license cannot be transferred to third persons.

Article 20. Grounds for Revocation of the Banking License

The National Bank of Ukraine can revoke the banking license exclusively in the following cases:

1) It is revealed that the documents, submitted for a banking license, contain false information.

2) The bank failed to carry any banking operations during one year from the day the banking license was granted.

3) In case of the violation of the present Law or NBU normative acts, which led to significant loss of assets and insolvency of the bank.

4) Upon the basis of a conclusion by the provisional administrator on the inability to bring the bank into legal conformity with the demands of the present Law and NBU normative acts.

5) The ineffectiveness of implementing the plan of the provisional administration as to the reorganization of the bank.

The National Bank of Ukraine shall immediately inform the bank that its banking license has been revoked. The bank shall, within three days after receiving the corresponding decision, be obliged to return its banking license to the National Bank of Ukraine.

The bank, on the day of receiving of the decision to revoke the banking license on grounds set forth in p. 1, par. 1 of this Article, shall terminate all banking operations and take measures to ensure the fulfillment of its commitments before its depositors and other creditors in compliance with the concluded agreements and the provisions of the present Law.

The decision of the National Bank of Ukraine to revoke a banking license shall be published in the "Uriadoviy Kuryer" and "Holos Ukrainy" newspapers. The revocation shall be grounds to file a action to the court on the liquidation of the bank.

Article 21. Preliminary Permit for Establishing a Bank with Foreign Capital

In order to establish a bank with foreign capital, its founders shall be obliged to obtain a preliminary permit from the National Bank of Ukraine. In order for an operating bank to obtain the status of a bank with foreign capital, its Management (Board of Directors) shall be obliged to obtain a preliminary permit from the National Bank of Ukraine.

In order to obtain a preliminary permit for establishing a bank with foreign capital or for a bank to obtain the status of a bank with foreign capital, the following documents should be submitted to the National Bank of Ukraine:

- application as for preliminary permit;
- information on the founders, their business reputation and availability of the funds needed for the establishment of such a bank;
- permit of the foreign controlling body to take part in the establishment of a bank in Ukraine or assurance of the foreign founder as to the absence in the legislation of his/her country of origin of a demand to obtain such a permit;
- information on the underwriter and its business reputation, and an agreement with the underwriter in case the bank took a decision to sell bank shares on external markets through underwriting.

The application shall be considered by the National Bank of Ukraine within one month from the day it was received. The denial of the National Bank of Ukraine to issue a permit should be submitted in written form and motivated.

Article 22. Peculiarities of the Registration of Banks with Foreign Capital

Should the bank obtain the status of a bank with the foreign capital, provided that the investor acquires essential participation in the latter, the foreign investor, or upon

his/her instruction the share issuing bank, underwriter or any other legal entity or individual that has the power of attorney from the foreign investor, shall submit the following documents for the registration of the latter in addition to the documents listed in Article 17 of the present Law:

1) A notarized copy of the decision, from the place it was issued, of the empowered management body of the foreign investor on participation in a bank in Ukraine.

2) Written consent on participation of the foreign investor in the bank in Ukraine issued by the state or another authorized controlling body of the country, where the head office of the foreign investor is registered, should the legislation of that country require the mentioned permit, or a written assurance from the foreign investor as to the absence of a demand for preliminary permit for investments abroad.

3) A notarized extract from the trade (banking) register, from the place it was issued, or another official document, which affirms the registration of the foreign participant in the country, where the head office of the foreign investor is registered.

4) A notarized copy of the foreign audit firm conclusion, from the place it was issued, on the financial state of the foreign investor at the end of the last full calendar year. In case the indicated conclusion is provided by a foreign audit firm, not included in the list of foreign auditing organizations, recognized by the National Bank of Ukraine, such an conclusion should be confirmed by a Ukrainian audit firm.

Documents listed in pp. a, b, (with the exception of assurance of the foreign investor) c, and d in par 1 of this Article should be legalized in the established procedure, unless otherwise provided by international agreements, ratified by the Verkhovna Rada of Ukraine.

In cases when the foreign investor is a physical person he/she shall submit:

1) A written consent for the participation of the foreign investor in a bank in Ukraine, issued by a state or another authorized controlling body of the country, the legislation of which requires such permit; or written assurance of the foreign investor as to the absence of demands for preliminary permits for investments abroad in the legislation of the country of residence. The written consent should be legalized at a Consulate of Ukraine, unless otherwise provided by an effective international agreement, ratified by the Verkhovna Rada of Ukraine.

2) A form questionnaire containing, among other things, information that the individual has no previous convictions.

In case the documents indicated in this Article are written in a foreign language, they should be accompanied by a notarized translation into Ukrainian.

The National Bank of Ukraine shall have the right to reject the registration of a bank with essential foreign participation if at least one of the documents, specified in this Article are not available or any of them is not executed properly. The rejection shall be submitted in written form with indication of corresponding reasons.

Chapter 4. Branches and Representative Offices of Banks

Article 23. Procedure for Opening Branches and Representative Offices of Banks on the Territory of Ukraine

Branches of banks shall be opened upon the approval of the National Bank of Ukraine on the basis of the following documents:

1) Application of the bank to open its branch, stating location and principle activities of the proposed branch.

2) Decision of the bank Supervisory Council on the opening of a branch.

4) Provision on the branch approved by bank Supervisory Council.

5) Information on branch manager and chief accountant.

The National Bank of Ukraine shall verify the suitability of premises and equipment of the branch according to NBU requirements

The National Bank of Ukraine shall have the right to refuse approval of the establishment of a branch on any of the following grounds:

1) Submitted documents fail to meet the requirements of the present Law or NBU normative acts

2) The premises and equipment of the branch do not meet the requirements of the National Bank of Ukraine as to the safekeeping of valuables (in case a branch intends to work independently with cash and valuables).

3) The proposed candidates for manager and chief accountant of the branch fail to meet the requirements of the present Law as to professional suitability and business reputation.

4) It was revealed that the applicant bank is experiencing financial or legal problems, which indicate possible negative consequences for clients or for potential bank clients as a result of branch opening.

Registration of bank branches shall be performed by the National Bank of Ukraine within one month from the moment of submission of all required documents by an entry of a supplement in the State Bank Register.

The banks shall be obliged to submit information to the National Bank of Ukraine on the opening of a representative office, to be entered into the State Bank Register.

Article 24. Procedure for Registration of Foreign Bank Representative Office on the Territory of Ukraine

The registration of representative offices of non-resident banks shall be carried out by the National Bank of Ukraine.

The following documents shall be submitted for registration:

1) Application for registration of the foreign bank representative office signed by an authorized person.

2) Extract from the bank (trade) register or another official document, which confirms the registration of the foreign bank.

3) Provision on the representative office.

4) Power of attorney from the foreign bank to perform representative functions.

The above-mentioned documents, with the exception of the application for the registration of a foreign bank representative office, shall be notarized at the place of their issuance, and legalized at a Consulate of Ukraine unless otherwise provided by an effective international agreement, ratified by the Verkhovna Rada of Ukraine, and must be accompanied by a notarized translation into Ukrainian.

The National Bank of Ukraine can reject the registration of a foreign bank representative office in case of violations of the registration procedure, non-conformity of the submitted documents to the legislation of Ukraine, doubtful information as well as failure to meet registration conditions or exceeding competence in relation to the spheres of activities of the representative office. The denial shall be submitted in written form specifying motives thereof.

Article 25. Subsidiary Banks, Branches and Representative Offices of a Ukrainian Bank on the Territory of Other Countries

Ukrainian banks shall have the right to establish subsidiary banks, branches and representative offices on the territory of other countries on the basis of a NBU permit. The same requirements are set forth for opening subsidiary banks, branches and representative offices of Ukrainian banks on the territory of other states as those for opening branches and representative offices of banks on the territory of Ukraine, on condition that the

National Bank of Ukraine grants a permit for investments abroad in connection with the establishment of a branch or a representative office of the bank on the territory of another country.

In order to establish a subsidiary bank, branch or representative office of a Ukrainian bank abroad, this bank shall provide the National Bank of Ukraine with a business plan and economic substantiation of the expediency for establishing a subsidiary bank, branch or representative office of the bank abroad.

The subsidiary bank, branch or representative office of a Ukrainian bank on the territory of another country shall undergo registration in conformity with the legislation requirements of the respective country.

Within one month the bank must inform the National Bank of Ukraine about the opening of a subsidiary bank, branch or representative office on the territory of another country and provide copies of the relevant documents on their registration..

Chapter 5. Reorganization of a Bank

Article 26. Ways for Bank Reorganization

The reorganization of a bank shall be performed voluntarily upon a decision of its owners, or coercive upon the decision of the National Bank of Ukraine.

A reorganization can be carried out by a merger, annexation, splitting, separation and transformation.

Merger means the termination of activity of two or more banks as legal entities and transfer of their property, funds, rights and obligations to the successor bank established as a result of the merger.

Unification means the termination of activity of one bank as a legal entity and the transfer of its property, funds, rights and obligations to another bank.

Splitting means the termination of activity of one bank as a legal entity and the transfer of its property, funds, rights and obligations, in the relevant shares, to the banks established as a result of the reorganization of this bank through splitting.

Separation means a transformation of a bank as a legal entity and the transfer of a certain share of its property, funds, rights and obligations to the bank established as a result of reorganization.

Transformation means change of organizational and legal form of the company.

Article 27. Conditions for Bank Reorganization

The procedure for coercive reorganization of banks is set forth by the present Law and normative acts of the National Bank of Ukraine.

Reorganization upon the decision of bank owners shall be carried out in accordance with the legislation of Ukraine on economic entities provided that a preliminary permit was obtained from the National Bank of Ukraine.

In order to obtain a permit for bank reorganization, an application shall be submitted to the National Bank of Ukraine with the necessary substantiation and calculations, which would testify to positive consequences for the depositors and other creditors of the bank.

The National Bank of Ukraine shall not give a permit for a bank reorganization in the event that there are sufficient grounds to believe, that the reorganization poses a threat to the interests of depositors and other creditors, and the bank, established as a result of the reorganization, will fail to meet requirements regarding economic norms of its activity, bank registration procedure and licensing of their activity.

The National Bank of Ukraine shall grant a permit or issue a rejection for the reorganization of the bank within one month from the moment the application of the bank for reorganization was received.

Coercive reorganization shall be carried out in case of significant threat to the bank's solvency.

Article 28. Decision on Reorganization

The decision on reorganization of a bank, with the exception of transformation, shall include the following data on:

- An agreement on reorganization in case of a merger or unification.
- The appointment of commission members to carry out the reorganization.
- The appointment of members of the auditing committee for carrying out an inventory, audit of material values, registered with the bank (banks).
- The appointment of an independent auditor that has a NBU certificate
- The time limits for reorganization.
- The composition of the Management (Board of Directions) after the reorganization.

The reorganization shall begin after the National Bank of Ukraine approves the reorganization plan, which, apart from all other necessary measures, should envisage the submission to the National Bank of Ukraine of relevant documents, which are necessary for the state registration of the new bank or for registration of the changes and amendments to the foundation documents of the existing bank.

The bank shall be considered reorganized at the moment the National Bank of Ukraine introduces changes and amendments into the State Bank Register.

In case of coercive reorganization, decisions envisaged by pp. 2-6, par 1 of this Article shall be taken by the National Bank of Ukraine, and the agreement on reorganization shall not be signed. General conditions for reorganization shall be set forth in Resolution of the NBU Management, and be binding for execution by all the parties.

Article 29. Agreement on Merger or Unification

The agreement on merger or unification shall be concluded in a written form by banks being reorganized through merger or unification.

The agreement on merger or unification shall contain provisions that regulate issues set forth in Article 28 of the present Law.

The agreement on merger or unification shall enter into force the moment it has been approved by a 2/3 majority of shareholders (participants) at a general meeting of each bank.

Part III. Capital, Management and Requirements to Activity of Banks

Chapter 6. Capital, Funds and Reserves of a Bank

Article 30. Structure of a Bank Capital

The capital of a bank shall include:

- Fixed capital.
- Supplementary capital.

The fixed capital of a bank includes paid-in and registered authorized capital and disclosed reserves, which are formed or increased at the expense of retained profits, share premiums and additional contributions of the shareholders into the capital, general risk coverage fund, which is formed against undetermined risk in the course of banking operations, with the exception of losses for the current year and nonmaterial assets. Disclosed reserves also include other funds of the same quality, which should correspond to the following criteria:

1) Deductions to the funds should be made from profits after taxation or from profits before taxation, adjusted for all potential tax commitments.

2) Funds and cash inflow and outflow should be separately disclosed in the published statements of the bank.

3) Funds should be placed at the disposal of the bank for compensation of losses in order to use them unlimitedly and immediately in case of incurred losses.

4) The losses cannot be covered directly from the funds. They should be recorded using the profit and loss account.

If approved by the National Bank of Ukraine, the supplementary capital can include:

1) Hidden reserves (except for the fact that such reserves are not reflected in the published balance sheet of the bank, they should be of the same quality and nature as disclosed capital reserve).

2) Revaluation reserves (fixed assets and unrealized value of the "hidden" revaluation reserves resulting from long-term holding of securities recorded in the balance sheet at the historic cost of their purchase);

3) Hybrid (debt/capital) capital instruments, which should meet the following criteria:

- they are unsecured, subordinated and fully paid;
- they cannot be cancelled upon the initiative of the holder;
- they can freely participate in the covering of losses without demanding that the bank terminate trading operations;
- they allow delay in commitments servicing as to interest payments in case profitability level does not allow to perform such payments.

4) Subordinated debt (ordinary unsecured debt capital instruments, which under contract conditions cannot be withdrawn from the bank earlier than after a 5 year period, and in case of bankruptcy or liquidation shall be returned to investors after reimbursement of the claims of all other creditors). Meanwhile the amount of such funds, included into the capital, cannot exceed 50% of the fixed capital with the annual decrease by 20% of its original value within the last 5 years of the contract).

The National Bank of Ukraine has the right to determine, in the form of regulations, other line items of the bank balance sheet to be included into the supplementary capital as well as conditions and procedure for such inclusion. The supplementary capital cannot exceed 100% of the fixed capital.

Article 31. Authorized Capital at Moment of Bank Registration

The minimum size of the bank authorized capital at moment of registration cannot be less than, as follows:

- 1 million EURO - for regional cooperative banks;
- 3 million EURO - for banks that carry out their activity on the territory of a certain region or oblast;
- 5 million EURO - for banks that carry out their activity on the entire territory of Ukraine.

The recalculation of the amount of authorized capital into UAH shall be carried out according to the official foreign exchange rate, established by the National Bank of Ukraine on the day of payment.

The bank shall be obliged to adjust the size of the capital as to devaluation index or revaluation of inflation at the expense and within the limit of gross bank profits or losses of the bank according to methods established by the National Bank of Ukraine.

The National Bank of Ukraine has the right to establish, at the moment of registration, a differentiated minimum size of authorized capital for separate types of

banks depending on their specialization. This size shall not be less than the amount specified in this Article.

Article 32. Procedure for Bank Capital Formation

The authorized capital of a bank shall be formed in accordance with the requirements of the present Law, the legislation of Ukraine and the foundation documents of the bank.

The formation and increase of the authorized capital can be carried out exclusively through monetary contributions. Monetary contributions for formation and increase of the authorized capital of a bank by Ukrainian residents shall be provided in Hryvnias, while the non-residents provide contributions in freely convertible foreign currency or in Hryvnias.

The authorized capital of the bank shall not be formed from unsanctioned sources.

A bank shall have the right to increase its authorized capital after all participants have fully fulfilled their commitments in respect of payment for their shares and previously declared subscribed capital has been fully paid.

A bank does not have the right to decrease the size of the regulatory capital lower than the established minimum level without approval of the National Bank of Ukraine. The capital of the bank can not be less than the authorized capital.

It is prohibited to use budget funds for the bank capital formation if these funds have a different targeted purpose.

Article 33. Bank Shares and Stock

Banks shall issue their own shares and announce subscription to stock in compliance with the Ukrainian legislation on economic entities and securities taking into account the specific points defined by the present Law.

Banks are not allowed to issue bearer shares.

Existence of the losses is not an obstacle for announcing subscription to the shares or stock of the bank or increase of the authorized capital of a bank.

Banks shall have the right to purchase own shares or stock with further notification of the National Bank of Ukraine on concluded contracts, which should be sent within 5 days after the date the contract was signed. Banks cannot purchase own shares if this can lead to a decrease in the fixed or regulatory capital lower than the minimum level.

The bank shall, 15 days prior to the signing of a contract, notify the National Bank of Ukraine in writing about its intention to acquire 10 and more percent of own shares or stock of the general issue. The National Bank of Ukraine shall have the right to prohibit such purchase of bank's own shares or stock if this can lead to the worsening of the bank's financial condition.

The issuer bank sells own shares on the primary market directly or through underwriters. The Bank shall be permitted to act as an agent for the purchase and sale of own shares or stock.

Article 34. Essential Participation

A legal entity or individual wishing to acquire an essential participation in a bank or increase it so that this entity or person would directly or indirectly own or control 10%, 25 %, 50% and 75% of the authorized capital or voting rights of bank management bodies shall be obliged to obtain written permission from the National Bank of Ukraine.

To obtain such permission, the applicant must submit information, specified in NBU normative acts concerning the financial condition and business reputation of the future owner of the essential participation of the bank.

The National Bank of Ukraine must approve or reject the application for a permit to purchase or increase essential participation of a bank within one month upon receipt of a complete package of required information. The refusal to grant a permit for the purchase or increase of essential participation of a bank shall be submitted in written form specifying relevant reasons.

The National Bank of Ukraine does not grant permission for the acquisition or increase of the essential participation in a bank in accordance with part 1 of this Article in the following cases:

1) The person who will acquire the essential participation does not have an impeccable business reputation. If the applicant is a legal entity, this criterion shall cover members of the executive body and Supervisory Council of the legal entity, as well as holders of essential participation that are individuals.

2) The absence of own funds in an amount, adequate to make the declared contribution.

3) The purchase or increase of essential participation will threaten either the interests of holders and other creditors of the bank, or the development of the competitive environment in the banking system

If any person holds an essential participation in a bank, or increases his participation in a bank to the level set forth in part 1 of this Article without obtaining the written permission from the National Bank of Ukraine, the latter shall have the right to prohibit direct or indirect, full or partial use by such a person of voting rights of acquired shares (stock) and any participation in the management of bank affairs.

In case there is a prohibition to exercise voting right, the right to participate in the voting shall be transferred to the authorized person, who is appointed by the National Bank of Ukraine upon the petition of the bank. The authorized person shall, in the process of the voting, be obliged to act in the interests of qualified and prudential bank management.

The decisions of a general meeting of participants that were made with the use of the voting right of acquired shares (stock), with respect of which a temporary prohibition of using it is established, shall not have a legal force.

Article 35. Adequacy of Capital

The banks, as well as essential participation holders shall be obliged to maintain the parity norms between the size of a regulatory capital and amount of the risk-weighted assets - capital adequacy. Banks are obliged to maintain their regulatory capital at a level, which is not less than 8% of the risk-weighted assets and off-balance sheet liabilities. For a bank, which starts its operational activity, this norm must be 15% within the first 12 months and not less than 12% within the next 12 months. The National Bank of Ukraine also has the right to set the minimum parity ratio of the regulatory capital to aggregate assets.

The procedure for calculating the size of bank capital and capital adequacy, minimum size of bank regulatory capital is stipulated by the present Law and the normative and legal acts of the National Bank of Ukraine.

If the level of the regulatory capital of the bank reaches a level lower than the one established by the National Bank of Ukraine, the bank shall be obliged, within one month, beginning with the day the decrease of capital was established, to submit a plan detailing the procedure and terms of restoring the regulatory capital level for the consideration of the National Bank of Ukraine

The bank shall be prohibited to pay dividends or distribute capital in any form if such payments or distribution will lead to violation of the capital adequacy ratio.

If the bank fails to receive any profit for the previous year, the bank shall be allowed to pay the dividends or distribute the capital in any form within the sum, which does not exceed 50% of difference between bank capital and regulatory capital level.

Article 36. Reserve and Other Funds of the Bank

Banks shall be obliged to form reserve funds to cover unforeseen losses for all articles of assets and off-balance commitments.

The amount of allocations to the reserve fund shall not be less than 5% of bank profit until the reserve fund reaches 25% of bank regulatory capital.

Should the activity of the bank pose a threat to the interests of the depositors and other creditors of the bank, the National Bank of Ukraine has the right to require an increase in the size of the reserve and annual allocations thereto.

The banks shall be obliged to form other funds and reserves to cover losses from assets in conformity to NBU normative and legal acts.

Chapter 7. Bank Management

Article 37. Bank Management and Controlling Bodies

The bank management bodies comprise the General Meeting of bank stockholders, the Supervisory Council and the Management (Board of Directors) of the bank.

The auditing commission and internal audit shall be the controlling body of the bank.

Article 38. General Meeting of Participants

The highest body of bank management shall be the General Meeting of participants.

The General Meeting of bank participants shall have the authority to take decisions on the following matters:

- 1) Outline of the basic trends of bank activity and approve bank plans and reports on implementation thereof.
- 2) Introduction of changes and amendments to the bank statute.
- 3) Change of the size of bank authorized capital
- 4) Appointment and dismissal of the Chairmen and members of the bank Supervisory Council and Auditing Commission.
- 5) Approval of annual results of bank activity including its subsidiaries, approval of the reports and conclusions of the auditing commission and independent auditors.
- 6) Profit distribution.
- 7) Termination of bank activity, appointment of a liquidator, approval of the liquidation balance sheet.

The bank Statute may include other questions in the competence of the General Meeting of participants. The power, set forth in p.p. 1-7 of this Article, belongs to the exclusive competence of the General Meeting of participants. Other power of the General Meeting of participants may be delegated to the competence of the bank Supervisory Council.

Article 39. Bank Supervisory Council

The Supervisory Council of the bank shall be elected at the General Meeting of participants from among bank participants or their representatives. Members of the bank Supervisory Council cannot be members of the Management (Board of Directors) or the Auditing Commission of the bank.

The Supervisory Council of the bank shall perform the following functions:

- 1) Appoint and dismiss the Chairman and members of the Management (Board of Directors) of the bank.
- 2) Control the activity of the Management (Board of Directors) of the bank.
- 3) Appoint the external auditor.
- 4) Set forth the procedure for audits and supervision over financial and economic activity of the bank.
- 5) Take decisions on coverage of losses.
- 6) Take decisions on establishment, reorganization and liquidation of subsidiaries, branches and representative offices of the bank, approval of their statutes and regulations.
- 7) Approve the terms of remuneration and material incentives for bank staff.
- 8) Prepare the proposals on issues to be considered at the General Meeting of participants.
- 9) Exercise other power, delegated by the General Meeting of participants.

Power and working procedures for the bank Supervisory Council shall be determined by the bank Statute or regulations on bank Board, which are approved by the General Meeting of participants.

Article 40. Bank Executive Body

The Bank Management (Board of Directors) shall be the executive body of a bank. It shall supervise current bank activity, the formation of funds, necessary for statutory bank activity, and bear responsibility for effectiveness of its work in accordance with the principles and procedures established by the bank Statute, decision of the General Meeting of the participants and the bank Supervisory Council.

Within its competence the Management (Board of Directors) acts on behalf of the bank and is accountable to the General Meeting of participants and the Supervisory Council of the bank

The Management (Board of Directors) of the bank shall act on the basis of the regulation approved by the General Meeting of the participants or by the Supervisory Council of the bank.

The Chairman of the Management (Board of Directors) shall supervise the work of the executive body and have the right to represent the bank without a power of attorney.

Article 41. Auditing Commission

The Auditing Commission shall exercise control over the financial and economic activity of the bank.

The Auditing Commission shall:

- 1) Control adherence of the bank to the legislation of Ukraine and NBU normative acts.
- 2) Study reports of internal and external auditors, and prepare respective proposals for the consideration of the General Meeting of participants
- 3) Submit proposals to the General Meeting of participants or the Supervisory Council of the bank on any issues attributed to the competence of the Auditing Commission, which concern financial security and bank stability and protection of the interests of clients.

The Auditing Commission shall be elected by the General Meeting of participants of the bank from among participants or their representatives. The Auditing Commission shall be accountable to the General Meeting of the bank participants.

Members of the Auditing Commission cannot be persons employed by the bank.

The Auditing Commission shall inspect the financial and economic activity of the bank on the instruction of the General Meeting of participants, Supervisory Council of the bank, or upon demand of a participant (participants) who jointly in aggregate hold more than 10% of votes.

The Auditing Commission shall be entitled to involve external and internal experts and auditors in inspections and audits.

The Auditing Commission shall report on the results of the audits and inspections to the General Meeting of participants or the Supervisory Council of the bank. The Auditing Commission shall prepare its conclusions in respect of reports and bank balance sheets. The General Meeting of participants shall not have the right to approve the bank's financial statements without the conclusion of the Auditing Commission.

Members of the Auditing Commission may take part, with the right of a deliberative vote, in the sittings of the Supervisory Council and Management (Board of Directors) of the bank..

Sittings of the Auditing Commission shall take place as required, at least once a year.

Extraordinary sittings of the Auditing Commission may be called by the Supervisory Council of the bank or upon the initiative of the shareholders, who hold more than 10 percent of the votes.

Decisions are taken by a majority of votes of Auditing Commission members.

The powers of the Auditing Commission of the bank are set forth by the bank Statute, and the procedure of its work or by Provisions on the Auditing Commission, which are approved by the General Meeting of bank participants/shareholders.

Article 42. Requirements for Bank Managers

The managers of a bank shall be the chairman, his deputies and members of the Bank Council, the chairman, his deputies and members of the Management (Board of Directors), chief accountant, his deputy and directors of separate bank structural divisions.

Managers of banks must be competent individuals who meet the following requirements:

- 1) Higher education in the field of economics, law or management, as appropriate for the position to be occupied (this requirement does not apply to Bank Supervisory Council members).
- 2) Length of service in the banking system on the relevant position, not less than three years (this requirement does not apply to the Bank Supervisory Council members).
- 3) Flawless business reputation.

The Chairman of the Management (Board of Directors) of the bank and the Chief Accountant shall take office after the National Bank of Ukraine gives its consent in writing

The Chairman of the Management (Board of Directors) of the bank and the Chief Accountant should have previous bank managerial experience.

Article 43. Obligations in Respect to Protection of Bank Interests

Bank managers, in carrying out their duties under the present Law, must act in the best interest of the bank and its clients, and must consider the bank's interests before their own.

In particular, bank managers shall be obliged to:

- 1) Demonstrate appropriate attitude to their professional duties fulfillment
- 2) Make decisions within the framework of granted powers.
- 3) Not take advantage of their professional status for their own personal benefit.

Article 44. Risk Management

The bank shall set up a standing unit for the analysis and management of risks, which would be responsible for setting the limits in respect to separate transactions, risk limits for contra parties, countries of contra parties, balance sheet structure in accordance with resolutions of the Management (Board of Directors) on the policy related to the riskiness and profitability of bank operations.

In order to ensure additional measures of risk management, the banks shall create the standing commission, in particular:

1) A credit committee, which evaluates the quality of bank assets on a monthly basis and prepares proposals on for the formation of reserves for covering possible losses resulting from their depreciation.

2) An assets and liabilities management committee, which on the monthly basis reviews the cost of liabilities and return on assets, and takes decision on interest margin policy, reviews decisions on matching the assets and liabilities and provides the relevant bank units with recommendations on the elimination of mismatching.

3) A tariff committee, which on the monthly basis analyses correlation of the services cost and market competitiveness of the existing tariffs, and is responsible for the bank operational profit policy.

In addition, the banks should independently decide and set up bodies of financial risk management aimed at ensuring favorable financial conditions for protecting the interests of depositors and other creditors.

Article 45. Internal Audit

Banks shall establish an internal audit service, which is a body of the operational supervision of management (Board of Directors) of the bank.

The internal audit service shall perform the following functions:

- 1) Supervision of the current activity of the bank.
- 2) Control over compliance with laws, normative acts of the National Bank of Ukraine and decisions of bank management bodies.
- 3) Inspection of the results of the current financial activity of the bank.
- 4) Analysis of information and reports on the activity of the bank, on professional activity of its employees, and abuse of power by bank officials.
- 5) Provision of conclusions and recommendations as a result of inspections.
- 6) Other functions associated with supervision and control over the activity of the bank.

The internal audit service shall be accountable to the Management (Board of Directors) of the bank and report to them, and act on the basis of regulations approved by the Management (Board of Directors).

The internal audit service shall have the right to study all documents of the bank, to observe and supervise the work of any division of the bank. The internal audit service is authorized to demand written explanations from certain bank officials in respect to shortcomings revealed in their work.

The candidate for the position of the internal audit manager shall be agreed upon with the National Bank of Ukraine.

The internal audit service shall not be held responsibility for and shall not have powers over operations which it audits.

The internal audit service shall be responsible for the scope and authenticity of reports of the Management on issues pertaining to its competence and stipulated by this Law.

Officers, upon being appointed to a post in the internal control service, shall sign a document on non-disclosure of information on bank activity and guarding of the banking secrecy pursuant to provisions set forth in Chapter 10 of the present Law.

Article 46. Responsibility as to Providing Information to the National Bank of Ukraine

The Management (Board of Directors) of the bank shall, within 3 banking days, be obliged to inform the National Bank of Ukraine in the following cases:

- 1) Dismissal of any manager (managers) of the bank and a candidature of another person to be appointed to the managerial position.
- 2) Change of the bank's legal address, place of location and its separated structural subdivisions.
- 3) Losses in the amount of 15% or more of the bank's capital.
- 4) The capital drops to a level below the level of the regulatory capital.
- 5) There is at least one condition for the appointment of a temporary administrator or a liquidator.
- 6) Termination of banking activity.
- 7) When an accusation of committing a crime for mercenary ends is brought against a bank manager, an individual – a holder of essential participation, or a representative of a legal entity – a holder of essential participation.

The National Bank shall have the right to specify a list of other information that is important for the purposes of banking supervision.

Chapter 8. Requirements for Bank Activity

Article 47. Banking Operations

Banks shall have the right to conduct the following operations based on a banking license:

- 1) To receive deposits from legal entities and individuals.
- 2) To open and service current accounts of their clients and correspondent banks, including transfer of the funds from these accounts by means of payment instruments and placing funds to these accounts.
- 3) To place attracted funds on own behalf, under own terms and at own risk.

In addition to the above operations listed in part 1 of this Article, a bank has a right to perform the following operations and agreements:

- 1) Transactions with foreign values.
- 2) Issue of own securities.
- 3) Organization of the purchase and sale of securities upon the instruction of clients.
- 4) Performance of operations on the securities market on own behalf (including underwriting).
- 5) Granting of guarantees, bails and other liabilities in favor of third persons that envisage their execution in monetary form.
- 6) Acquisition of the right to claim the fulfillment of liabilities in monetary form for the delivery of goods and rendering of services, accepting the risk for the fulfillment of these claims and receipt of payments (factoring).
- 7) Leasing.
- 8) Accountable safekeeping and renting of safes for storing valuables and documents.
- 9) Issue, purchase, sale and servicing of checks, notes and other negotiable payment instruments.

10) Issue of bank payment cards and performance of operations using these cards.

11) Provision of consulting and information services pertaining to banking operations.

Operations, defined in pp. 1-3, part 1 of this Article, are exclusive banking operations, the aggregate performance of which is permitted only to the legal entities possessing a banking license. Other legal entities have the right to provide operations, which are set forth in pp. 2-3, part 1 of this Article, on the grounds of the license to perform separate banking operations, while other operations and agreements stipulated by this Article may be conducted in accordance with the procedure set forth by legislation.

Banks may also conduct the following operations with written permission from the National Bank of Ukraine:

- 1) Investment into the authorized funds and shares of other legal entities.
- 2) Issuance, putting in circulation, repayment (distribution) of a state and other monetary lottery;
- 3) Transportation of currency values and encashment of funds;
- 4) Operations, on behalf of clients or on own behalf:
 - with money market instruments;
 - with instruments based upon exchange rate and interest;
 - with financial futures and options.
- 5) Trust management of funds and securities, upon agreement with legal entities and individuals.
- 6) Activity as a depository and the keeping of a register of holders of own registered securities.

The National Bank of Ukraine shall establish a procedure for granting permission to banks to conduct operations set forth in pp. 1-4, part 2 of this Article. Such permission shall be granted if:

1. The bank's regulatory capital level meets NBU requirements, which is confirmed by an independent auditor.
2. The bank is not the subject of any enforcement action.
3. The bank has presented a plan, specifying how such activity will be carried out, and approved by the National Bank of Ukraine.
4. The National Bank of Ukraine concludes that the bank has sufficient financial capabilities and the necessary experts to carry out this activity.

The bank shall have the right to implement other agreements in compliance with Ukrainian legislation.

The National Bank of Ukraine shall have the right to set forth special requirements, including the requirement to raise the level of the regulatory capital of a bank or other economic norms, related to a particular type of activity stipulated in this Article.

Commercial banks shall independently set interest rates and commission fees for their operations.

Article 48. Banking Activity Restrictions

Banks shall be prohibited from carrying out activity in the sphere of material production, trade (with the exception of the sale of commemorative, jubilee and investment coins) and insurance, but they can act as insurance agent.

Specialized banks (with the exception of the savings bank) shall be prohibited from attracting deposits from individuals in the amounts exceeding 5% of bank capital.

A bank can own real estate the total value of which does not exceed 25 percent of its capital. This restriction does not include, as follows:

- Premises that ensures technological banking functions.
- Property that was transferred to the ownership of the bank on the right of a pledge holder under collateral agreement conditions.
- Property obtained by the bank in order to prevent losses, on condition that the bank should alienate this property within one year from the moment of ownership.

Article 49. Credit Operations

In this Article, credit operations mean operations, listed in p. 3, part 1, and pp. 3 – 7, part 2 of Article 47 of the present Law.

Banks can conclude consortium crediting agreements in order to provide joint financing. In the framework of such an agreement, the member banks determine terms for extending credit and appoint a bank, which is responsible for implementation of an agreement. Member banks shall bear risks on extended credit proportionally to funds, contributed to the consortium.

The bank shall be obliged to have a subdivision, the functions of which include extension of credit and management of credit-related operations.

Banks shall be prohibited to directly or indirectly extend credit to acquire own securities. The use of own securities as collateral shall be only allowed with NBU permission.

During the extension of credits, banks shall be obliged to comply with general crediting principles, including checking of the creditworthiness of the borrowers and the availability of collateral, and adhere to requirements concerning risk concentration, established by the National Bank of Ukraine.

A bank can not extend credit at an interest whose rate is less than the interest on credits obtained by the bank itself, as well as the paid deposit interest. Exceptions are possible only in cases when an operation will not result in losses to the bank.

A bank has the right to extend grant blank credits on condition that economic norms are complied with.

The granting of the non-interest bearing credits is prohibited except in cases specified by the law.

In case of untimely repayment of credit and interest thereof, the bank shall have the right to issue an order on the forced payment of debt obligations, if this is envisaged by the agreement.

Article 50. Direct Bank Investments

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

Banks shall have the right to make investments only on the basis of written permission from the National Bank of Ukraine, which is granted in accordance with the rules and regulation set forth in Article 47 of the present Law.

The bank shall have the right to make investments without written NBU permission in the following cases:

1. An investment into any legal entity amounts to not more than 5% of the bank's regulatory capital.
2. The investee legal entity is engaged exclusively in activity connected with rendering of financial services.
3. The bank's regulatory capital fully complies with NBU normative acts concerning investments.

Procedure for informing on investment, stipulated in part 3 of this Article, shall be established by the National Bank of Ukraine.

It is prohibited for banks to invest into an enterprise or institution whose statute specifies unlimited liability of its owners.

The direct or indirect participation of a bank in the capital of any enterprise or institute shall not exceed 15% of the bank's capital. Total investments of a bank shall not exceed 60% of its own funds.

These restrictions shall not apply to:

1) Shares and other securities acquired by the bank in connection with the foreclosure on a loan and not kept by a bank for more than one year.

2) Shares issued by one bank and acquired by another bank in order to create a financial holding group.

3) Securities held by the bank for not more than one year, which obtained them as a result of underwriting.

4) Shares and other securities acquired by the bank at the expense and on behalf of its clients.

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

Article 51. Settlement Banking Operations

In order to perform banking activity, banks shall open and service correspondent accounts with the National Bank of Ukraine, other banks in Ukraine and abroad, as well as banking accounts for legal entities and individuals in Hryvnias and foreign currency.

Bank settlements shall be carried out in the cash and non-cash form in accordance with rules and regulations established by the NBU normative acts.

Non-cash settlements shall be carried out using paper and electronic carriers.

In the capacity of payment instruments, the banks in Ukraine may use payment orders, payment requests, claims-order notes, checks, banking payment cards and other debit and credit payment instruments, which are used in international banking practice.

Payment instruments should be properly prepared and contain data on the issuer, payment system where they are used, legal grounds for the settlement operation and, as a rule, holder of payment instrument and fund recipient, date of gross income and gross expenditures, as well as and other information necessary for performance of the settlement by the bank in full conformity with instructions of the account holder or other initiator of the settlement operation envisaged by law.

In the course of the settlement operation, the bank shall be obliged to check the authenticity and formal adequacy of the document.

Article 52. Agreements with Related Parties

Agreements concluded with related parties of the bank can not envisage more favorable terms than agreements concluded with other persons. Agreements concluded between a bank and related parties, if they contain more favorable conditions, shall be invalid from the moment of their conclusion.

For the purposes of this Law, the following are considered to be related parties:

1) Bank managers.

2) Holders of essential participation in the bank.

3) Close relatives, spouses, children, parents of any persons, specified in pp. 1) and 2).

4) Affiliated persons of the bank, managers and holders of essential participation in such affiliated persons, as well as their close relatives.

Conditions that are more favorable include the following:

- 1) Acceptance of a collateral that is of a lower value, than that required of other clients.
- 2) Purchase of low-quality property or property at an overestimated price from the related parties.
- 3) Making an investment into securities of a related party that the bank would not have invested in another institution.
- 4) Payment for goods or services from a related party at a price higher than ordinary, or under circumstances when these same goods or services would never have been procured from another party.

A bank can conclude agreements with related parties, which envisage calculation of interest rate and commission fee for banking operations, which are lower than the ordinary ones, and calculation of the interest rate on deposits, which are higher than ordinary ones in case a bank's net profit allows this without any harm to the bank's financial development.

It is prohibited for a bank to extend credit to any person: to cover liabilities of this person to a related party of the bank; to acquire the assets of the bank's related party; to acquire securities, placed or underwritten by the bank's related party, with the exception of goods manufactured by this person.

By issuing its order, the National Bank of Ukraine can introduce restrictions of the sum of agreements with related parties.

Article 53. Ensuring Competition in the Banking System

It is prohibited for banks to conclude agreements with the aim of limiting competition and monopolizing crediting terms, other banking services, and the setting of interest and commission fees.

It is prohibited for the bank to set interest rates and commission fees, which are lower than the cost of services in this bank,

It is prohibited for the bank to take any other actions for the implementation of unfair competition in its practice.

Facts of unfair competition in the rendering of any banking services or conducting operations shall be grounds for prohibiting the bank from further providing such services or operations.

Article 54. Authenticity of Advertising

It is prohibited for banks to distribute any form of advertising that contains false information on their activity in the sphere of banking services.

The National Bank of Ukraine has the right to impose enforcement actions on banks and other persons, which/who violate requirements of this Article

Chapter 9. Relations with Clients

Article 55. Regulation of Relations with Clients

Relations between a bank and its clients are regulated by the legislation of Ukraine, NBU normative-legal acts and agreements (contracts) concluded between clients and the bank.

The bank is obligated to exert maximum efforts to avoid conflicts of interest of bank employees and clients, and conflicts of interest between bank clients.

It is prohibited for the banks to demand that clients acquire any product or service from the bank or from the bank's affiliated or related party as a mandatory condition for the rendering of banking services.

Article 56. The Right of Clients to Receive Information

A client shall have access to information on bank activity. Banks shall be obliged to provide the following information upon the request of clients:

- 1) Data, which is subject to mandatory publishing, on financial indicators of the bank's activity and its economic status.
- 2) List of bank managers and its separated subdivisions, as well as legal entities and individuals, which/who hold an essential participation in the bank.
- 3) The list of services provided by the bank.
- 4) The price on banking services.
- 5) Other data and consultations pertaining to the provision of banking services.

Article 57. Guarantee of Individual Deposits

The deposits of individuals in commercial banks shall be guaranteed in accordance with the procedure foreseen by the legislation of Ukraine.

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

Article 58. Bank's Responsibility for Its Liabilities

The bank shall be responsible for its liabilities with all its assets in accordance with the legislation of Ukraine.

The bank shall not be held responsible for non-fulfillment or untimely fulfillment of its obligations in case of a moratorium on meeting the demands of creditors, suspension of settlement operations, arrest of own bank funds on its accounts by authorized bodies of state power.

The bank participants shall be held responsible for the bank's liabilities in accordance with the laws of Ukraine and bank Statute.

Article 59. Arrest, Suspension of Operations with Accounts and Exaction

The property and other funds of a bank, placed in its accounts, as well as funds and other valuables of legal entities and individuals, placed with a bank, may be arrested only upon the order of an investigator, sanctioned by the prosecutor, or an order of a State executor in cases stipulated by the laws of Ukraine, or by court verdict.

The property can be released from arrest only by the order of the body that took the respective decision, or by the court decision.

The suspension of own operations of a bank with its accounts, as well as the suspension of payment operations with accounts of legal entities and individuals that are bank clients, shall be carried out by state bodies in conformity with the legislation of Ukraine and exclusively in cases stipulated by the laws of Ukraine.

It is prohibited to impose arrest on the correspondent accounts of a bank or suspend all operations with these accounts.

Operations with accounts can be resumed by the body which took the decision to suspend them or by a court decision.

Exaction of own funds of a bank, money and other valuables of legal entities and individuals with the bank is exercised only upon the executive documents envisaged by the laws of Ukraine.

A decision of the court on exaction of funds placed in the accounts of legal entities or individuals, the payment operations with respect to which were suspended by an authorized body, shall be executed immediately and unconditionally, with the exception of cases when a moratorium is imposed in accordance with this Law.

Chapter 10. Banking Secrecy and Confidentiality of Information

Article 60. Banking Secrecy

Confidential information on the activity and financial condition of a client, that became known to the bank through dealings with him/her, or to any third parties through the rendering of banking services, and the disclosure of which can inflict material or moral harm to the client, shall constitute banking secrecy.

In particular, banking secrecy includes:

- 1) Data on the state of clients' accounts, including correspondent accounts of banks with the National Bank of Ukraine.
- 2) Operations on the behalf of or upon instructions of a client; contracts executed by the client.
- 3) Financial and economic condition of clients.
- 4) Security systems of the bank and clients.
- 5) Information on organizational and legal structures of the client legal entity, its managers and activity directions.
- 6) Data on the client's commercial activity or commercial secrecy, any project, inventions, production's samples, and other commercial information.
- 7) Information on reporting of a specific bank, with the exception of information, subject to publication.
- 8) Codes used by a bank to protect its information.

Confidential information on banks or clients, which is collected in the process of bank supervision, constitutes banking secrecy.

Provisions of this Article do not cover summarized information on banks, subject to publication. A list of information subject to mandatory publication shall be prepared by the National Bank of Ukraine and additionally by the bank itself under its discretion.

Article 61. Obligations as to Guarding of Banking Secrecy

The banks shall ensure the guarding of banking secrecy by means of:

- 1) Limiting the number of persons who have access to information that constitutes banking secrecy.
- 2) Organizing a special handling procedures for documents that contain banking secrecy.
- 3) Using technical facilities to prevent unauthorized access to electronic and other information carriers.
- 4) Inclusion of clauses covering the guarding of banking secrecy and responsibility for its disclosure in agreements and contracts concluded between the bank and its client.

When hired, bank employees shall sign a commitment for guarding banking secrecy. Managers and employees of banks shall not disclose confidential information which become known to them during the performance of their official duties, or use it for their own benefit or for the benefit of any third party.

Private individuals or organizations, which, in the course of their functions or the rendering services to a bank, directly or indirectly obtained confidential information, shall not disclose such information or use it for their own benefit or for the benefit of the third party.

If losses are inflicted on the bank or its clients through the leak of information on the bank or its clients from empowered banking supervision bodies, bodies guilty of such disclosure shall reimburse these losses.

Article 62. Procedure for Revealing Banking Secrecy

Information concerning legal entities and individuals, which contains banking secrecy, is disclosed by banks:

- 1) in response to a letter of inquiry or by written permission of an owner of such information;

- 2) on the written order of the court or by the court decision;
- 3) to the bodies of the Office of Public Prosecutor, the Security Service of Ukraine, and the Ministry of Internal Affairs of Ukraine – by their written order concerning operations with the accounts of a particular legal entity or an individual – a subject of entrepreneurial activity, during a specified period of time;
- 4) to the bodies of the State Tax Service of Ukraine – by their written order concerning the issues of taxation or currency regulations, with regard to operations with the accounts of a particular legal entity or an individual – a subject of entrepreneurial activity.

An order for obtaining information which contains banking secrecy, shall:

- 1) be presented in an official form of a state body;
- 2) be signed by a manager (or deputy manager) of a state body and sealed with an official stamp;
- 3) specify grounds stipulated by this Law and necessary to obtain such information;
- 4) have references to the provisions of the Law, in accordance with which the state body has the right to obtain such information.

A bank shall issue a certificate of accounts (deposits) in the event of death of their owners to persons specified by the owner of an account (deposit) in his/her bequest for the bank, to state notary offices or private notaries, and foreign consulate offices in cases pertaining to inheritance of accounts (deposits) of deceased owners of accounts (deposits).

The bank shall not provide information about the clients of another bank, even if their names are mentioned in the documents, agreements and operations of the client.

The bank shall have the right to provide general information, which is a banking secret, to other banks within the limits required to grant credits and bank guarantees.

Restrictions with regard to obtaining information containing banking secrecy, which are envisaged by this article, shall not apply to the employees of the National Bank of Ukraine or persons authorized by them, who, within the powers provided by the Law of Ukraine "On the National Bank of Ukraine," perform the functions of banking supervision or foreign exchange control.

In accordance with an international treaty or under the principle of reciprocity the National Bank of Ukraine has the right to provide information about a bank to the banking supervision body of another country in the following cases:

- 1) It does not violate the state interests and the banking secret.
- 2) There are guarantees that the information obtained will be used exclusively for the bank supervision purposes.
- 3) There are guarantees that the information obtained will not be transferred outside the bank supervision body.

The provisions of this article do not apply to cases when banks, pursuant to the current legislation, provide information about dubious operations, and to other cases, stipulated by the law, when information about banking operations is to be provided to special units intended to combat organized crime.

Persons found guilty of violating the procedure for revealing and using the banking secrecy, shall bear responsibility in accordance with the laws of Ukraine.

Chapter 11. Prevention of Legalization of Money Acquired by Illegal Means

Article 63. Prevention of Legalization of Money Acquired by Illegal Means

In this Law, the legalization of illegally acquired money means the placement with a bank of money or other property gained by violation of the legislation, or the transfer of such money or property through the banking system of Ukraine, with the aim

of concealing its origin or creating the impression that the money or property was gained legally.

Banks shall, in conformity with the legislation of Ukraine, be obliged to prevent utilization of the banking system for the legalization of money.

Article 64. Obligations Concerning Identification of Persons

Banks are prohibited from entering into any contractual relations with anonymous persons.

Banks shall be obliged to identify all persons that perform large-scale and/or doubtful operations.

Operations that fall under the following criteria shall be considered large-scale:

Non-cash settlements under the agreements in the amount, which exceeds the equivalent of 50 000 EURO or cash agreements in the amount, which exceeds the equivalent of 10 000 EURO in accordance with the NBU exchange rate.

Operations that meet the following criteria shall be considered doubtful:

1) An operation is conducted under unusual and unjustifiably confusing conditions.

2) An operation is not economically justified or contradicts the legislation of Ukraine.

Banks shall be obliged to identify the persons that make settlements under the agreements for the amounts lower than the sums stipulated in p. 1, part 3 of this Article, if the agreement is definitely connected with another agreement, and if the total sum of payment under these agreements exceeds the established limit, or in case of well-grounded suspicion that this money was obtained by illegal means.

Herein, in order to prevent crimes, information on the identification of persons shall be put at the disposal of respective bodies by the banks in accordance with legislation of Ukraine, that regulates the struggle against organized crime.

Identification of a person is not necessary:

1) If the operation is performed by employees who perform the operations on behalf of the client on a regular basis, and these employees were previously identified

2) In case of implementation of agreements between banks.

Article 65. Safekeeping the Documents

All documents that were the basis for implementation of agreements, stipulated in Article 64 of the present Law, as well as written results of the identification of the persons involved thereof, shall be kept by the bank in the course 5 years from the date of the agreement implementation.

Part IV. Banking Activity Regulation and Supervision

Chapter 12. Authority of the National Bank of Ukraine as to Banking Activity Regulation and Supervision

Article 66. Forms of Banking Activity Regulation

State regulation of banking activity shall be performed by the National Bank of Ukraine in the following forms:

1. Administrative regulation.
 - 1) Registration of banks and licensing of their activity.
 - 2) Establishment of requirements and limitations as to banking activity.
 - 3) Imposition of administrative or financial sanctions.
 - 4) Supervision over activity of banks.
 - 5) Recommendations in respect to activity of the banks.
2. Indicative regulation.
 - 1) Setting of compulsory economic norms.
 - 2) Determination of compulsory reserve norms for banks.
 - 3) Determination of deductions to provisions to cover risks of active banking operations.
 - 4) Interest rate policy.
 - 5) Refinancing of banks.
 - 6) Correspondent relations.
 - 7) Management of gold and currency reserves, including currency interventions.
 - 8) Operations with securities in the free market.
 - 9) Import and export of capital.

Article 67. Purpose, Organization, Grounds and Scope of the Supervision

The main objective of bank supervision is to ensure stability of the banking system and protect interests of depositors and creditors of the bank in respect to the safekeeping of client funds on banking accounts.

Supervisory activity of the National Bank of Ukraine covers all banks, their subdivisions, affiliated and related parties of banks on the territory of Ukraine and abroad, offices of foreign banks in Ukraine, as well as other legal entities and individuals as regards compliance with requirements of this Law in carrying out banking operations.

In the course of its supervisory activity, the National Bank of Ukraine has the right to require that the banks and managers thereof eliminate banking law violations, fulfill NBU normative acts in order to avoid or to prevent undesirable consequences, which could jeopardize the safety of funds, entrusted to these banks or inflict harm on proper banking activity.

During the supervision of banks, the National Bank of Ukraine can enlist the services of other institutions under the separate contracts.

In case the banking license is revoked, the National Bank of Ukraine informs relevant bodies of other countries, where this bank had branches or correspondent and other accounts.

The National Bank of Ukraine shall carry out banking supervision on an individual and consolidated basis and apply enforcement actions for violation of the banking activity legislation.

In case the National Bank of Ukraine reviews issues regarding the application of enforcement actions with respect to a specific bank, the Chairman of the Management (Board of Directors) or Chairman of the Supervisory Council of this bank shall be invited

to give explanations. An exception in this case is the appointment of a temporary administrator or revoking of bank license and appointment of liquidator.

During supervision over the institutions, which carry out banking activity in other countries, the National Bank of Ukraine co-operates with relevant bodies of those countries. Notification sent by the relevant bodies of other countries, can only be used for the following purposes:

To check a license of an institution for carrying out activity.

To check the right for carrying out banking activity.

Chapter 13. Accounting, Reporting and Auditing

Article 68. General Grounds for Accounting and Reporting

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

The accounting shall ensure a timely and full reflection of all the banking operations and provision of authentic information to users on the state of assets and liabilities, results of financial activity and changes therein.

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

Article 69. Reports of Banks

A bank is obliged to submit to the National Bank of Ukraine its financial statements and statistic reports on its activity, operations, liquidity, solvency, profitability as well as the information on its affiliated persons with the aim to assess the bank's financial status.

The National Bank of Ukraine has the right to require consolidated statements from the banks.

The National Bank of Ukraine shall establish the following for the banks:

- 1) Reporting forms and procedure for their compilation.
- 2) Frequency and time frame for submission of reports.
- 3) Structure of explanatory notes.
- 4) Minimum information subject to publication and time limits for its submission.

- 5) Methods for compiling the consolidated statements.

The National Bank of Ukraine has the right in certain cases to require the submission of single and temporary reports.

Each holder of the essential participation in the bank, who is a legal entity, shall be obliged to submit an annual report to the National Bank of Ukraine within the defined time limit, regarding its activity. The report should contain the following information:

- 1) Type of activity carried out by the legal entity.
- 2) Information. on economic entities, in which this legal entity's participation exceeds 10 percent, in particular: the name and address of the legal entity, amount of the participation held by this person, and type of activity.
- 3) Balance sheet and profit account of that entity at the end of the last fiscal year.

The National Bank of Ukraine has the right to require submission of other periodical reports or information from the bank's essential participation holder in order to supervise the security and stability of the bank's financial position and to ensure adherence to the provisions of the present Law.

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

Financial statements of banks to be submitted to the National Bank of Ukraine must be audited annually. The audit of a bank is to be performed by an auditor that has a certificate of the National Bank of Ukraine empowering him to audit banking institutions.

The auditor's report shall contain the following:

- 1) Bank balance sheet.
- 2) Profit and loss account.
- 3) Statement of movement of capital.
- 4) Schedule on assets and liabilities maturity.
- 5) Information as for the adequacy of bank reserves and capital.
- 6) Information on the adequacy of the accounting, internal audit and bank's control mechanisms.
- 7) A conclusion, whether the submitted financial statements reflect the bank's real financial position.

Article 70. Publication of the Financial Statement

The bank shall publish its quarterly balance sheets and a profit and loss account in "The Uriadoviy kurier" or "Holos Ukrainy" during the month that precedes the reporting quarter.

The Bank shall publish its annual financial statements confirmed by auditors before June 1, of the year following the reporting year in the newspapers "The Uriadoviy kurier" or "Holos Ukrainy".

Chapter 14. Bank Inspections

Article 71. Inspections

Every bank is subject to on-site inspections by inspectors of the National Bank of Ukraine or by auditors appointed by the National Bank of Ukraine.

Inspections shall be performed with the purpose of identifying the level of safety and stability of the bank's operations, reliability of the bank's reporting and compliance with the Ukrainian legislation on banks and banking and the National Bank of Ukraine normative acts.

Examination shall be performed in accordance with the plan, approved by the National Bank of Ukraine. The planned examination shall be conducted not more than once a year. Planned examination shall be performed in case the bank obtained a written notification concerning the examination with specification of the time limits thereof not later than 10 days prior to the beginning of the examination.

Banks shall ensure free access to all the documents and information, observing the rules set in this Article, to the National Bank of Ukraine inspectors and other specially authorised persons, and during the on-site examination - the possibility to have a free access to all the premises during the working hours.

The management of the bank shall appoint a competent official to supply the inspectors with the required documents and explanations, and provide the representatives of the National Bank of Ukraine Banks Supervisions Service with a room for work.

The National Bank of Ukraine can take a decision to perform an extraordinary examination of the bank if sound grounds for doing so exist. Such a decision shall be signed by the National Bank of Ukraine Chairman or by the person, authorised by the Chairman.

When exercising its supervisory authority, the National Bank of Ukraine has the right to obtain from banks, free-of-charge, the information about their activity, as well as explanations on separate issues of the bank's activity.

If the inspection materials contain no data on the breach of the legislation, they cannot be transferred for the verification to third parties.

In the course of inspections of banks, the National Bank of Ukraine has the authority to inspect any records (statements) of any affiliate of the bank, for the purpose of determining the effect of such relationship on the bank. Such affiliates and their officials and owners must provide the National Bank with the same assistance and co-operation as must be provided by banks under this Article.

Article 72. Examinations and Inspections of Persons Subject to the National Bank of Ukraine Supervision

The National Bank of Ukraine has the right to inspect persons subject to bank the National Bank of Ukraine supervision in order to check for the compliance with the legislation governing the banking activity. In the course of these inspections, the National Bank of Ukraine has the right to demand information from any person subject to the inspection. The persons being inspected shall be obliged to submit to the National Bank of Ukraine the required information within the period of time defined by the National Bank of Ukraine.

The persons that can be subject to inspection by the National Bank of Ukraine include:

- 1) A holder of a major stake in a bank, if the National Bank of Ukraine believes, that this person (entity) does not meet the requirements set forth in this Law as for major stake-holding or negatively effects the bank's financial stability and security.
- 2) A person who obtained a major stake without the National Bank of Ukraine written permission.

A person (entity) in respect of which there is information that he/it conducted or conducts banking without a license.

Article 73. Enforcement Actions

In case a bank or other persons (entities) under the National Bank of Ukraine supervision in compliance with this Law, violate the banking legislation of Ukraine, any normative act of the National Bank of Ukraine, or perform risky operations, which threaten the interests of the bank's depositors or other creditors, the National Bank of Ukraine has the right to use the adequate enforcement actions, including:

- 1) Send a written warning requiring the termination of such violations, and adoption of measures to correct the situation; reduction of the bank's expenses; limitation of unwarranted high interest payments on the attracted funds; reduction or alienation of inefficient investment.
- 2) Calling of the general meeting of the stockholders, a meeting of the council of the bank or the Board of Directors of the bank to agree on the action plan for a bank's financial rehabilitation or a reorganisation plan
- 3) Signing a written agreement with the bank under which the bank or the bank-authorised person assumes an obligation to redress violations, improve the financial condition of the bank, etc.:
- 4) Issuing the instructions concerning the:
 - a) Suspension of the payment of dividends or the distribution of the capital in any other form.
 - b) Imposition of increased individual economic norms;
 - c) Increase in the loan loss provisions and allowances for other assets
 - d) Limitation, termination or suspension of some high risk operations performed by the bank;
 - e) Imposing a ban on the provision of blank credits
 - f) Imposition of financial sanctions (fines) on:
 - Bank directors in amount up to one hundred untaxed minimal incomes of citizens;

- Banks under the Regulations approved by the National Bank of Ukraine Board but not more than 1 percent of the registered statute fund.

g) Temporary prohibition to the essential participation holder from the use of his/her voting rights in case he/she seriously or repeatedly violated requirements of this Law or the National Bank of Ukraine normative acts.

h) Removal temporarily the bank's official from his/her office and prohibit him/her from holding any position the banks in case of serious or repeated violation of requirements of this Law or of the National Bank of Ukraine normative acts.

i) Bank reorganisation

j) Appointment of the provisional administration of the bank.

In the event of the violation of this Law or the National Bank of Ukraine regulations that caused a significant loss of assets or income and brought about the insolvency of a bank, the National Bank of Ukraine shall have the right to revoke the bank's license and initiate bank liquidation procedures under the present Law.

If any official person or a major stakeholder or a representative of the legal entity, which holds an essential stake have been accused of committing a crime, but the *corpus delicti* has not been proven, and only a minor infringement on this Law or the National Bank of Ukraine Regulations has been found to occur, or if this person is found guilty of any such criminal offence without a prison sentence, the National Bank of Ukraine has the right to issue an order discharging that person from his/her position with the bank or prohibit the exercise of his/her voting rights in the bank.

A person discharged from office or temporarily stripped of the voting rights in the bank can be acquitted only subject to the prior permission of the National Bank of Ukraine.

The resolution of the National Bank of Ukraine on the appointment of a provisional administration is an executive document.

Article 74. Procedure of Imposition of Enforcement Actions and Sanctions in Case of Violation of the Banking Legislation

Fines shall be imposed on bank management and officials, natural entities holding a major stake pursuant to the procedure envisaged by the Code of Ukraine on administrative offences.

The effective laws of Ukraine and regulations of the National Bank of Ukraine determine procedures for application of enforcement actions and the size of financial sanctions applied to banks and other legal entities subject to supervisory activities of the National Bank of Ukraine

Part V. Provisional Administration and Liquidation of Banks

Chapter 16. Provisional Administration

Article 75. Appointment of a Provisional Administration

The National Bank of Ukraine is obliged to appoint a provisional administration in the event of a considerable threat to a bank's solvency.

The National Bank of Ukraine has the right to appoint a provisional administration to a bank in the following cases:

1. There are systematic violations by the bank of legal requirements stipulated by the National Bank of Ukraine. Decreasing the bank's capital by 30% within the last 6 month with simultaneous violation of at least one economic normative.

2. In case a bank within 15 working days does not fulfil at least 10 per cent of its overdue liabilities.

3. The management of the bank is accused of the criminal actions.

4. The bank concealed accounts, any assets, registers, reports or documents.
5. The bank refused to provide documents or information related to activities thereof to the authorised representatives of the National Bank of Ukraine.
6. There exists a public conflict in the bank management.
7. The bank itself applied for appointment of a provisional administration.

The provisional administration shall assume its duties immediately after the National Bank of Ukraine issues the order about its appointment

The official appointed by the National Bank of Ukraine shall head the provisional administration.

If the National Bank of Ukraine applies to the court with the lawsuit on the bank liquidation, the mandate of the provisional administration shall be valid beyond the deadlines set by the court for the appointment of the liquidator.

The provisional administration's term in office cannot exceed one year since its appointment.

The National Bank of Ukraine shall have the right to prolong the mandate of the provisional administration for system-forming banks for the period of up to a year.

Article 76. Requirements to be Met by a Provisional Administrator and Conditions of His/her Appointment

A provisional administrator appointed by the National Bank of Ukraine fulfils functions of the provisional administration.

The provisional administrator there may be:

- a legal entity, which performs professional activity as for provisional administration and liquidation of the bank, rendering of the auditing, legal or consulting services and has not less than 3 employees possessing the National Bank of Ukraine certificate granting it the right to exercise the provisional administration of a bank and liquidation of a bank;
- an independent expert (under the contract);
- an employee of the National Bank of Ukraine.

In any case only the persons, who have the National Bank of Ukraine certificate granting them the right to exercise the provisional administration and liquidation of a bank and who have high professional and moral qualities, impeccable business reputation, economic or legal education and experience, necessary for fulfilment of the provisional administration function might participate in the provisional administration.

At any moment of time the National Bank of Ukraine has the right to assume control over the provisional administrator's activities, to dismiss the provisional administrator from his position in case the provisional administrator's performance does not comply with the established requirements.

The provisional administrator's work and work of the specialists, involved by him/her in order to ensure the fulfilment of his/her authorities is paid for every month of work in accordance with the contracts signed with them.

Work of a provisional administrator and of the attracted specialists is paid at the expense of the bank, for which he/she has been appointed.

The level of the provisional administrator's payment should not be lower than the average monthly salary of the Board/Council Chairman of this bank for the 12-month period prior to appointment of the provisional administration.

The temporary administrator within the expenses account of the temporary administration approved shall determine the level of compensation of the attracted experts by the National Bank of Ukraine.

Additional reward to the provisional administrator and specialists might be established under the National Bank of Ukraine approval.

A person cannot be appointed the provisional administrator of a bank if he or she is:

1. A creditor, related party or shareholder of the bank.
2. A person who was convicted, is a defendant under a criminal case
3. A person who failed to meet obligations to any bank.

In order to reveal the conflict of interests, before being appointed a provisional administrator, the candidate shall convey to the National Bank of Ukraine the information about his personal and business interests, in particular, about:

1. The debt to the bank, labour relations with it or ownership of the property rights of the bank.
2. Relationship, during the previous five years, with any bank as its related party.
3. Failure to meet any obligations concerning any bank during the last five years.
4. Ownership of property competing with the property of the bank.
5. Other interests that can hinder unbiased performance of his functions as a provisional administrator.
6. Information proving the lack of conflict of interests with the National Bank of Ukraine.

Before appointing a provisional administrator, the National Bank of Ukraine must ensure that there is no conflict of interests, or, in case such conflict exists, the candidate will be able to be unbiased in his/her actions.

In case a conflict of interests arises after a provisional administrator is appointed, he/she must take actions to eliminate the conflict of interests and simultaneously inform thereon the National Bank of Ukraine which is to handle the question on whether the provisional administrator can continue his/her work.

A provisional administrator shall not have the right:

1. To perform his/her functions in case of a conflict of interests, except for the cases when the National Bank of Ukraine is aware of it and allowed him to continue the work.
2. To accept any services, presents and other valuables, directly or indirectly, from persons interested in taking any actions related to the appointment of the provisional administration.
3. To use or allow to use the property that the provisional administrator has the right to control, in his/her interests or in the interests of third parties.
4. To extend promises or commit oneself on behalf of the National Bank of Ukraine without its written authorisation.
5. To disclose the banking secret or other official information, if it is not related to performing the functions of the provisional administrator.

Failure to fulfil or improper fulfilment of the provisional administrator's functions in accordance with this Law, which have inflicted losses to the creditors or the bank might be a ground for termination of his/her duties and deprivation him/her of a certificate on providing of provisional administration and liquidation of a bank.

In case a provisional administrator due to his/her activity or lack thereof caused the losses, a bank and/or creditors have a right to file a suit on compensation.

Article 77. Insurance of the Responsibility, Life and Health of the Provisional Administrator

Financial responsibility, life and health of the provisional administrator should be insured in accordance with the contract on provisional administration under the effective legislation of Ukraine.

Article 78. Consequences of the Provisional Administrator Appointment

Starting from the day a provisional administrator is appointed, the powers of the general shareholders' meeting, Supervisory Board and Board of Directors) of the bank are suspended and transferred to the provisional administrator. Contracts, concluded by the bank's managers after appointment of the provisional administration are invalid from the moment of their signing.

Article 79. Notice of Appointment of the Provisional Administrator

Within three days after the provisional administrator is appointed, the National Bank of Ukraine shall publish the information thereon in the newspaper "The Uriadoviy kurier" or "Holos Ukrainy".

The National Bank of Ukraine shall send to the bank's head office and to every territorial sub-division of the bank its decision on appointment of a provisional administration specifying the date, when the provisional administration started.

Article 80. Rights and Responsibilities of the Provisional Administrator

Immediately following his appointment, the provisional administrator shall ensure safekeeping of the bank's assets and documentation as well as assets and documentation of the affiliated persons, where the bank holds more than 50%.

Within one month from the moment of his/her appointment, the provisional administrator is obliged to take the stock of the bank's assets and liabilities and compile a realistic balance sheet.

From the day the provisional administrator is appointed he/she has a full and exclusive right to manage and control the bank, and to take any actions aimed at restoring the bank to satisfactory financial condition of the bank, or if possible, to prepare the bank for sale, reorganisation or liquidation in order to protect the interests of depositors or other creditors.

In particular the provisional administrator has the right:

1. To continue or stop any operations of the bank.
2. To perform any operations on behalf of the bank.
3. To terminate any contracts to which the bank had been a party that are, in the judgement of the provisional administrator, no longer necessary or beneficial to the bank.
4. To bring actions to the court institutions on property rights.
5. To apply to the court institutions for taking a decision according to which a borrower of the bank shall convey information about its assets.
6. To attract to the work on provisional administration any employee, expert, consultant as well as to entrust the managers with taking actions in respect of giving the necessary assistance to the provisional administration. The provisional administrator has the right to remove such persons any time from fulfilment of their duties.
7. To dismiss or reassign any of the bank's managers or employees, or redistribute their responsibilities, and change their salaries under the effective legislation of Ukraine.
8. To suspend the bank's capital distributions or payment of dividends in any form.
9. To sell such assets and return such liabilities of the bank as may be necessary to sell or return maintain or increase the solvency of the bank.
10. Under the National Bank of Ukraine approval, to arrange for the sale or reorganisation of the bank to retain or increase the latter's solvency.

The provisional administrator must receive authorisation from the National Bank of Ukraine to sell the bank's assets whose book value exceeds the level set by the National Bank of Ukraine.

In performing his duties, the provisional administrator under his/her status is equal to the representative of authorities. Any person who deliberately impedes the provisional administrator's access to the bank, its assets, books, records, or papers is liable in accordance with legislation. The law enforcement authorities are obliged to assist the provisional administrator in his/her work upon his/her written request.

Article 81. Avoidance of Transfer of the Bank Assets before the Provisional Administrator Is Appointed

A provisional administrator can apply to the court with a requirement to recognise a contract invalid, in case there were conducted:

1) any payment or transfer of assets for the purpose of granting a privilege to any creditor of the bank, within 6 months prior to the appointment of the provisional administrator;

2) any transaction with a related party of the bank, if unfavourable for the bank's depositors or other creditors, within 1 year prior to the appointment of the provisional administrator;

3) any transaction in which the payment made by the bank substantially exceeded the real value of the goods, services, or other assets received by the bank, within 3 years prior to the appointment of the provisional administrator;

4) any gratuitous transfer of assets within 3 years prior to the appointment of the provisional administrator (in the case a similar transaction was performed with a related party of the bank, within 5 years prior to the appointment of the provisional administrator);

5) any action performed with the intention to withhold assets from creditors of the bank, or otherwise to impair their rights, within 5 years prior to the appointment of the provisional administrator;

6) any transaction based on a fraudulent or forged document.

A provisional administrator does not pay the state duty while applying to the court or court of Arbitration.

Article 82. Continuous Provision of Services

A lessor of bank premises or provider of utility services, communication services does not have the right, within a 2 month period from the moment of administrator's appointment, to refuse such a service because of the appointment of the provisional administrator or because the bank has failed to pay for such services.

Article 83. Reports by the Provisional Administrator

Within one month from the moment of his/her appointment, a provisional administrator should submit a written preliminary report.

The report should reflect the bank's financial position (balance sheet, income statement, disclosure of some balance sheet items), likelihood of the bank's rehabilitation and amount likely to be obtained in case of liquidation.

The report also must include the following:

1) General information on the bank's compliance with the requirements of this Law, the normative acts of the National Bank of Ukraine and a recommendation in respect of termination of the provisional administration and restoration of the powers of the general meeting of shareholders, supervisory council of the bank and the board (board of directors) of the bank.

2) A detailed plan of the provisional administration's function fulfilment as for stabilisation of the bank's functioning, bringing the bank to compliance with the requirements of the normative acts of the National Bank of Ukraine.

3) A general plan for the sale of the bank, or any part of its assets in order to fulfil the liabilities.

4) Recommendations for reorganisation of the bank or revoking its banking license with the following liquidation.

The provisional administrator shall submit periodic reports to the National Bank of Ukraine on his/her activity, within the timeframe determined by the National Bank of Ukraine.

Article 84. Decision of the National Bank of Ukraine

Within two weeks after receipt of the report from the provisional administrator, the National Bank of Ukraine shall make a decision whether to accept the provisional administrator's recommendation for the bank.

In case the National Bank of Ukraine agrees with the provisional administrator's recommendations concerning financial rehabilitation, sale or reorganisation of a bank, the decision is taken to implement the provisional administrator's plan.

The National Bank of Ukraine must revoke the banking license of the bank and order the liquidation of the bank, if it determines that the bank cannot be brought into the legal and financial compliance with the requirements of this Law and the National Bank of Ukraine regulatory acts within one year. With respect to the system-forming banks, the National Bank of Ukraine may prolong this period up to 2 years.

The National Bank of Ukraine has the right to amend the provisional administrator's plan, prior to or during the implementation thereof.

The National Bank of Ukraine also has the right to terminate the plan, revoke the banking license of the bank, and order the liquidation of the bank at any time if it determines that successful implementation of the plan is no longer feasible.

Article 85. Moratorium

In order to create favourable conditions for the restoration of the bank's financial position, which would be compliant with the established requirements, the National Bank of Ukraine has the right to introduce a moratorium on the creditors' claims satisfaction for period of a provisional administration.

A moratorium on the creditors' claims satisfaction shall cover the liabilities, which have fallen due before the appointment of the provisional administration.

While the moratorium is in effect:

1) It is prohibited to perform exaction under the executive and other documents, under which the exaction is performed in accordance with the legislation.

2) The forfeit (interest or penalties), other financial (economic) sanctions for a failure to fulfil or improper fulfilment of the monetary and tax commitments are not accrued.

The moratorium does not apply to servicing of the current operations, performed by the provisional administrator, to the salary or alimony requests, claims for compensation of the damage inflicted on the health and life of individuals, author's fee, as well as covering of the creditors' claims, which have arisen from the bank's liabilities originated during the provisional administration.

After the expiration of the moratorium, the forfeit (interest or penalties) as well as amount of the losses inflicted, that a bank should have paid to the creditors under the monetary and tax commitments, may be claimed in amounts, which existed as of the date, when a moratorium was introduced unless otherwise provided for by this Law.

Article 86. Cessation of Provisional Administration Activities

Provisional administration of a bank ceases in case of:

1) The completion of the term of the provisional administrator's assignment.

- 2) The revocation of the banking license of the bank and the decision to appoint a liquidator for the bank.
- 3) Reorganisation of the bank in accordance with Chapter 5 of the present Law.
- 4) The removal of the provisional administrator by the National Bank of Ukraine decision.

Chapter 17. Liquidation of Banks

Article 87. Legal Grounds for Liquidation of Banks

A bank can be liquidated:

1. On the basis of the bank's owners' decision under the National Bank of Ukraine consent.
2. Pursuant to the decision of the National Bank of Ukraine / including based on the creditors' application.

Liquidation on the initiative of the bank's owners occurs in accordance with the Law on business partnerships, taking into consideration peculiar aspects envisaged by this Law and with the consent of the National Bank of Ukraine.

The present Law and the regulations of the National Bank of Ukraine foresee liquidation on the initiative of the National Bank of Ukraine.

Article 88. Peculiarities of Bank Liquidation in the Event of its Insolvency

The following entities have the right to go to the court with the application on recognizing a bank insolvent and on its liquidation:

- 1) Bank creditors
- 2) The National Bank of Ukraine

Persons mentioned in paragraph 1, Part 1 of this Article, shall send a letter of credence to the National Bank of Ukraine with the application on bank liquidation if there are signs that it is insolvent. To this application they shall attach documentary evidence that the bank has money obligations to them. If during a month since the filing of the application, these persons failed to obtain a response from the National Bank of Ukraine, they shall have the right to institute court proceedings as to the recognition of the bank as insolvent.

When the court examines the insolvency case, it shall apply the legislation of Ukraine on restoring debtor's solvency or recognizing the debtor bankrupt to the extent that does not run counter the norms of this Law.

In the course of case preparation for the hearing, a judge shall obtain a validated opinion of the National Bank as to the practicality of this move or a decision of the National Bank of Ukraine as to the revocation of the banking license. The National Bank of Ukraine shall submit one of these documents to the court within a month since receiving the court's inquiry.

The National Bank's of Ukraine negative opinion as to the revocation of the banking license and liquidation of the bank shall be grounds for leaving the application without consideration.

If the debtor bank is unable to meet its liabilities in keeping with the court ruling on the compulsory exaction of assets during six months and if during this period on agreement is reached as to foregoing debt rescheduling, the National Bank of Ukraine shall revoke the banking license and initiate bank liquidation procedures.

The case on recognizing a bank insolvent pursuant to the application of persons mentioned in Part 1 of the present Article could not be initiated until the revocation of the banking license.

Following license revocation, no rehabilitation of the insolvent bank shall be allowed.

An agency that initiated the liquidation decision shall appoint a liquidator. The liquidator shall commence his/its activities immediately after the license revocation.

Within a month since the court has accepted the case for examination the court shall make a final decision as to the bank liquidation. The only issue that shall be taken into consideration by the court in the bank liquidation case shall be whether there is any insolvency indications under the provisions of the present Law.

The court decision shall confirm a liquidator's candidature or appoint the liquidator that falls in with the requirements of the present Law. The conflict of interests the court has learned about may be the only grounds to decline the candidacy of the liquidator appointed by the National Bank of Ukraine.

Examination of the liquidation case in the court shall not suspend the activity of the liquidator appointed by the National Bank of Ukraine. The bank liquidation procedure shall be completed not later than 3 years since the revocation of the license.

Article 89. Announcement on the Liquidation

A liquidator publishes the data on opening of the liquidation procedure in the newspapers "The Uriadoviy kurier" or "Holos Ukrainy" at the bank's expense within a period determined by laws of Ukraine as of the moment the National Bank of Ukraine or the bank owner has taken a decision to liquidate the bank,.

The information on the liquidation procedures commencement should contain the name and other requisites of the bank under liquidation, the date of the National Bank of Ukraine (or the bank owner's) decision on liquidation and appointment of the liquidator, data about the liquidator.

Within one month, starting from the moment an announcement on liquidation procedure opening was made, the creditors have the right to present the liquidator with their claims to the bank.

It is not allowed to publish or otherwise disclose the data on the bank's insolvency until the decision on the bank's liquidation is taken.

Persons found guilty of divulging this information shall be liable under the effective legislation of Ukraine.

Article 90. Requirements to be Met by the Liquidators and Conditions of the Appointment thereof

A liquidator may be:

1) An individual, who meets the requirements to the provisional administrator set forth in Article 76 of this Law.

2) A legal entity, which performs professional activity as for provisional administration and liquidation of the bank, rendering of the auditing, legal or consulting services and has not less than 3 employees possessing the National Bank of Ukraine certificate granting them the right to exercise the provisional administration of a bank and liquidation of a bank.

An individual or a legal entity, who/which performed provisional administrator's functions in the bank shall not be appointed the liquidator of that bank.

Financial responsibility, life and health of the liquidator should be insured in accordance with the legislation of Ukraine, regulations of the National Bank of Ukraine, and the bank liquidation contract under the legislation of Ukraine.

Article 91. Consequences of Appointment of the Liquidator

Starting from the day when the liquidator is appointed:

1) The powers of the general meeting, Supervisory Council, the Board (Board of Directors), and of the provisional administrator, who transfers all the documentation to the liquidator of the bank, shall be terminated.

2) Bank's activity is wound up by completion of the technological cycle of specific operations in case it will assist in maintenance and growth of the liquidation mass.

3) All the bank's monetary commitments and obligations as to the payment of taxes and duties (obligatory payments) are considered mature.

4) The accrual of the interest payments, forfeit (fines or interest) and of other economic sanctions in respect of all types of the bank's indebtedness is terminated.

5) The data on the bank's financial status is no longer considered to be confidential or constituting a banking secret.

6) Conclusion of the agreements in respect of alienation of the bank's property or its transfer to the third parties is permitted under the procedure, stipulated in this Law.

7) The arrest of the bank's property or other limitations as for this property's disposal is lifted. Imposing of the new arrests or other limitations as for the bankrupt bank's property disposal is not allowed.

8) Any claims in respect of the bank's commitments arising in the course of the liquidation are laid only within the limits of liquidation procedure.

Article 92. Powers of the Liquidator in Implementation of Liquidation Procedures

From the date of his/her appointment, the liquidator shall:

1) Take the bank's property under his/her jurisdiction, adopt measures ensuring the safekeeping thereof.

2) Perform bank property management and administration functions.

3) Perform the inventorying and appraisal of the bank property in keeping with the effective legislation.

4) Perform functions of the bank management bodies.

5) Head the liquidation committee and form the liquidation mass.

6) Lay claims to the third parties concerning repayment of the bank's accounts receivable, including exaction thereof through court;

7) Have the right to obtain a credit in order to pay severance payments to the employees, who are dismissed due to the bank's liquidation. This credit is repaid with priority in accordance with Article 95 of this Law, from the funds raised through the sale of the bank's property.

8) From the day when the liquidation procedure was commenced the liquidator shall announce the dismissal of the bank's employees and perform it in accordance with the Ukrainian labour legislation.

9) Decline the creditors' claims to the bank in accordance with the prescribed procedure.

10) Announce the invalidity of the bank's contracts and shall terminate them in accordance with procedure, prescribed by this Law.

11) Take actions aimed at searching, locating and recovering the bank's property held by third parties.

12) According to the existing procedure, transfer the documents of the bank subject to mandatory safekeeping in accordance with legal and regulatory documents, to the place of safekeeping.

13) Take actions, which, in his/her opinion, will provide an opportunity to get, within the shortest possible period of time, maximum proceeds from the short-notice disposal of the assets.

14) Sell the bank's property in order to cover the claims, which are included into the Register of the creditors' claims.

15) Inform (within a ten day period from the moment an appropriate decision was taken) a state bankruptcy agency about his/her appointment and provide information to be included into the consolidated database on the bankrupt enterprises.

16) Exercise other powers, stipulated by this Law.

From the moment of his appointment, a liquidator shall acquire the rights of manager (management bodies) of the bank. Within 3 days since the appointment of the liquidator, the bank's management bodies shall ensure the transfer of all the accounting and other bank's documentation, seals and stamps, tangible and other assets to the liquidator. In case they seek to evade the fulfilment of the above mentioned duties, the management bodies, including separate managers thereof shall bear responsibility in accordance with the effective legislation of Ukraine.

In performing his duties, the liquidator under his/her status shall be equal to the representative of the National Bank of Ukraine. Any person who deliberately impedes the liquidator's access to the bank, its assets, books, records, or papers are criminally or administratively liable in accordance with legislation. The law enforcement authorities are obliged to assist the liquidator in his/her work upon his/her written request.

Article 93. Measures to be Prepared in Order to Satisfy the Creditors' Claims

After one-month period following the announcement of the liquidation procedure, the liquidator shall stop accepting the creditors' claims.

Within three months from the date indicated in the notification on liquidation, the liquidator shall take the following actions to satisfy the claims by the creditors:

- 1) Determine the amount of debt payable to each creditor and classify it according to the priority of repayment.
- 2) Decline the claims in case there are doubts about their validity
- 3) Transfer the list of savers to the Deposit Insurance Fund under the effective legislation of Ukraine.
- 4) Make the list of the claims accepted by him/her to be approved by the National Bank of Ukraine.
- 5) Notify the creditors on the acceptance of their claims.
- 6) Publish an announcement, each week within three weeks, indicating the day and place where the list of claims is available for examination and the date of its submission to the National Bank of Ukraine.

Creditors have a right to send to a liquidator their objections to the claims accepted by him/her within one month after the notification has been received.

The liquidator has the right, with the National Bank of Ukraine approval, to repay the claims to a bank after the priority list is finalised and approved by the National Bank of Ukraine, only in respect of the contracts, which ensure performance of the liquidation procedure.

The liquidator shall, within 2 month period following his/her appointment, inform all clients of the bank, who/which use the custody services that they need to remove their valuables within a 3 month period from the date of the liquidation procedure announcement.

The valuables, which were in custody with the bank and which were not taken by their owners within the indicated time limit are considered to be the funds which shall not be claimed by the bank creditors. These assets are transferred to the National Bank of Ukraine for return to their legal owners.

Article 94. Appraisal of the Bank's Property

The liquidator in accordance with the procedure stipulated by the Ukrainian legislation shall appraise the property under the liquidation procedure. For the property to be auctioned off, this appraised value is an initial price.

In order to appraise the property the liquidator has the right to involve experts on a contractual basis. Their services are paid for at the expense of the liquidation mass, unless otherwise established by the National Bank of Ukraine.

Article 95. Property Sale

After the inventorying and the property appraisal, the liquidator shall start the sale of property at the open auction, unless the National Bank of Ukraine establishes a different procedure.

The liquidator shall announce through the mass media the procedure for the property sale, composition thereof, conditions and timeframe for its acquisition. The procedure shall be agreed upon with the National Bank of Ukraine.

In case there are two or more bids for the purchase of the bank property, the liquidator shall hold a tender (auction). The tender (auction) procedure is established by the legislation of Ukraine.

The bank's property with controlled circulation is sold at the closed auction. Only persons, who are authorised by law to hold such property or possess other appropriate property rights, may participate in the closed auction.

Concession of the bank's claims is performed according to procedure, prescribed by the Ukrainian civil legislation.

The liquidator has the right to present for an auction the securities and bank's claims, unless a different procedure of concession of the bank's claims is set by the National Bank of Ukraine.

Article 96. Priority of Meeting the Claims to the Bank

Funds, which were received from liquidation procedure, are channelled to meet the creditors' claims in the following sequence:

- 1) Satisfied in the first place shall be:
 - a) collateralised claims;
 - b) Deposit Insurance Fund claims that arose in connection with the payment by the Fund of amounts stipulated by the legislation on deposit insurance;
 - c) severance payment to the dismissed bank employees, including repayment of the credit, obtained for this purpose;
 - d) expenses related to the liquidator's work, including:
 - expenses related to the payment of state duty;
 - expenses incurred in the publication of the liquidation announcement;
 - expenses for the mass-media publication of information concerning the property sale procedure;
 - expenses of the liquidator related to holding and maintenance of the bank's assets;
 - audit expenses;
 - expenses for payment for work of the employees who were involved by the liquidator to perform the liquidation.
 - e) obligations that emerged due to the impairment of citizens' health.

The above mentioned expenses are compensated after realisation of a part of the liquidation mass, unless otherwise stipulated by this Law.

2. Secondly, there are satisfied individual depositors claims, which exceed the amount, stipulated by the individual deposit insurance system, claims arising from the

bank's liabilities to its employees, claims related to the damage, committed to the health and life of the individuals.

3. Thirdly, other claims shall be satisfied.

Claims of every following priority are satisfied, when the funds from selling of the bank's property are available, and after the full satisfaction of the previous priority claims.

In case the funds are not sufficient for the full satisfaction of the claims of one priority, the claims are satisfied in proportion to the amount of claims of each creditor in the queue.

In case a creditor refuses to get satisfaction of the legally recognised claim, the liquidator does not consider the amount of this creditor's monetary claim.

Claims, placed after the deadline, shall not be considered and shall be recognised as be repaid.

Claims, unsatisfied because of lack of property, shall be considered as repaid.

In case, when at the moment of the liquidation completion, some of the bank's assets remain unsold and their immediate selling would result in an essential loss of their value, the liquidator shall transfer these assets to administration of the legal entity, defined by the National Bank of Ukraine, which is obliged to take actions, directed at continuation of the creditors' claims' satisfaction at the expense of the received assets.

Property, left after satisfaction of the creditors' claims is transferred to the owners and property of state banks, to the relevant privatisation body for its further sale. Funds, obtained from this property sale are channelled to the State Budget of Ukraine.

Property of co-operative banks remaining after the satisfaction of creditor demands shall be used under the legislation of Ukraine on the Cupertino.

Article 97. Remuneration of Persons Involved in the Liquidation

Payment for the work of persons involved in assisting the liquidator shall be done in accordance with the procedure, established by this Law for the provisional administrator and specialists hired by him/her, and must not be lower than the payment for the work of the bank's employees for rendering similar services taking into account scope and complexity of work.

Article 98. Completion of the Liquidation

The liquidation of the bank shall be considered complete and the bank shall be considered liquidated when the relevant entry has been made to the Register of banks upon approval of the liquidator's report.

Article 99. Challenging the National Bank of Ukraine Decisions

Bank or other persons under the National Bank of Ukraine authority, have the right, according to the procedure specified by the law, to challenge in court the decisions or actions of the National Bank of Ukraine or its employee, provisional administrator or liquidator, as well as the actions or inaction of provisional administrators or liquidators.

Decisions on the appointment of the provisional administrator or liquidator can be challenged in the court in the absence of grounds stipulated by this Law.

Filing the complaint shall not terminate the execution of the challenged decision.

In the course of any judicial case examination, initiated as a result or in connection with the application of this Law against the National Bank of Ukraine or its employee, provisional administrator or liquidator, the provisional administrator, liquidator or expert, appointed to provide assistance to the provisional administrator or liquidator, shall be responsible for damage caused by his activity or inactivity, in accordance with terms of reference or in the course of its fulfilment within the framework of a bank's

provisional administration or liquidation, in case such activity or inactivity were intentional.

Damage, caused as a result of provisional administrator's or liquidator's professional mistake, is compensated under the effective legislation of Ukraine, the National Bank of Ukraine regulations, and financial risk insurance contracts

Challenges or subsequent claims or some other challenge-related judicial review shall not terminate the provisional administration process, bank liquidation or other challenged measures and decisions.

Part VII. Final clauses

1. This Law shall take effect on the date of its publication.

The National Bank of Ukraine shall have the right to establish transitional periods for implementation of provisions of this Law not exceeding the time limits of this Law, if it allows the banks to achieve compliance with the requirements of this Law.

Banks having been established prior to the effectiveness date of this Law shall, within 2 years, align their activities with the requirements hereof.

The National Bank of Ukraine shall within a year as of taking effect by this Law re-issue licenses to banks allowing for the classification of operations provided for by this Law.

Bank establishment procedures as well as issuance of licenses allowing carrying on banking operations being under way when this Law took effect shall be governed by the provisions of this Law.

Bank liquidations which started prior to taking effect by this Law shall be finalized in keeping with procedures prescribed by this Law and regulatory acts of the National Bank of Ukraine passed in accordance with this Law.

2. Before being brought into conformity with this Law, other laws and regulatory acts of Ukraine shall apply in the parts thereof, that do not contradict this Law.

3. The Cabinet of Ministers of Ukraine and the National Bank of Ukraine, within six month after this Law has been published, shall:

- Prepare and submit to the Verkhovna Rada of Ukraine their proposals in respect of bringing laws of Ukraine in compliance with this Law;
- Bring their regulatory and legal acts in compliance with this Law;
- Ensure the adoption of documents needed for the implementation of this Law;
- Ensure that the ministries and other central executive power bodies bring their regulatory and legal acts in compliance with this Law.

4. The following documents shall be henceforce deemed null and void:

- The Law of Ukraine "On Banks and Banking" (Vidomosti Verkhovnoi Rady URSR, 1991, No 25 p. 281, with subsequent changes and amendments)
- Item 11, Section 1, Law of Ukraine "On Introducing Changes and Amendemends to Certain Legal Acts of Ukraine in Connection with the Adoption of the Laws of Ukraine "On the State Executive Service" and "On Executorial Administration" dated October 19, 2000 #2056-III;
- Article 62 of the Law of Ukraine "On the National Bank of Ukraine" (Vidomosti Verkhovnoi Rady, 1999, No 29, p. 238);
- Resolution of the Verkhovna Rada of Ukraine "On the Enactment of the Law of Ukraine "On Banks and Banking"(Vidomosti Verkhovnoi Rady URSR, 1991, No 25 p. 282, Vidomosti Verkhovnoi Rady Ukrainy, 1994, No 52 p. 467)

Leonid Kuchma, President of Ukraine

City of Kyiv