

# LAW OF THE REPUBLIC OF TAJIKISTAN «ON BANKING ACTIVITIES»

## CHAPTER 1. GENERAL PROVISIONS

## CHAPTER 2. STATE REGISTRATION OF CREDIT INSTITUTIONS AND LICENSING OF BANKING ACTIVITIES

## CHAPTER 3. CAPITAL

## CHAPTER 4. MANAGEMENT OF CREDIT INSTITUTIONS

## CHAPTER 5. REGULATION OF ACTIVITIES OF CREDIT INSTITUTIONS

## CHAPTER 6. ACCOUNTING AND FINANCIAL REPORTING

## CHAPTER 7. AUDIT

## CHAPTER 8. CONFIDENTIALITY

## CHAPTER 9. SUPERVISION AND INSPECTION

## CHAPTER 10. FINAL PROVISIONS

The present Law defines legal and institutional bases of banking activities for the purpose of creation of favorable conditions for implementation of banking activities in the Republic of Tajikistan.

## **CHAPTER 1. GENERAL PROVISIONS**

### **Article 1. Main Definitions**

In this Law the following main definitions shall be used:

- banking activity – performance of banking operations stipulated in the Law by credit institutions;
- banking system of the Republic of Tajikistan - the National Bank of Tajikistan and credit institutions functioning in the Republic of Tajikistan;
- credit institutions - legal entities (banks and non-bank credit institutions) implementing all or a part of operations stipulated by the present Law, which main objective is earning profit;

-bank – a credit institution with the the right to implement at least three following operations: to attract deposits and savings, extend loans, open and operate bank accounts;

-non-bank credit institutions - credit institutions entitled to implement certain banking operations. The list of banking operations for non-bank credit institutions shall be determined by the National Bank of Tajikistan;

-a subsidiary bank – bank, in which more than fifty percent of voting shares are held by other bank;

-executives – the chairman of credit institution and his deputies, the chairman of the Board and other members, the chief accountant of credit institution as well as the manager and the chief accountant of the branch of credit institution including a branch of a foreign bank;

- credit institution holding company – a legal entity that owns or controls a credit institution;

-an affiliated company – a legal entity that controls a credit institution, as well as any other legal entity shall be controlled by the given legal entity including a legal entity related to this group in accordance with the legal standard acts of the National Bank of Tajikistan;

-supervision powers over other legal entity - powers of the entity, which:

a) directly or indirectly through one or more owners, is an entity supervising 25 percent or more voting shares of company or it owns them;

b) has an opportunity to select the majority of managers of the company;

c) has other supervising powers defined by the National Bank of Tajikistan;

- branch – a special structural subdivision of a credit institution located outside its location where all or some banking operations are implemented on its behalf with a single authorized capital and single balance sheet with a credit institution;

- branch of a foreign bank – a special structural subdivision founded by a foreign bank for the implementation of banking activities in the Republic of Tajikistan;

-representative office - a special structural subdivision of a credit institution outside its location that protects and represents its interests and does not perform any banking activities;

- credit- any funds disbursed by a credit institution to customer subject to repayment and additional payment;

- deposit – money and other valuables of legal entities and individuals placed with credit institutions.

-savings – funds whose right of temporary use was transferred to the credit institution subject to a certain interest payment;

-resident – a legal entity, a branch and its representatives, whose office is located in the territory of the Republic of Tajikistan;

-non-resident – a legal entity, a branch and its representatives, whose office is located outside the Republic of Tajikistan;

- fit and proper person – an individual, which:

a) has not been convicted by a criminal court for a deliberate crime or a crime, having corruption nature unless such a crime connected to his/her religious or political views and actions;

b) has not been declared bankrupt by a court of law within past seven years;

c) has not been disqualified or suspended by a court or competent authorities from practicing a profession on grounds of misconduct unrelated to his/her religious or political views and actions;

d) has not been declared unfit to manage a company by a court of law or competent authorities;

- qualifying holding - a direct or indirect holding by a person acting alone or through or in concert with other persons in an undertaking, which represents more than ten percent of the authorized capital or voting rights of a credit institution or a qualifying holding as defined by the National Bank of Tajikistan;

-a related person means:

a) an executive;

b) family members of an executive;

c) a person and his family members who have a qualifying holding in credit institution and any legal entity where such person or any executive has a qualifying holding;

d) any legal entity, in which the credit institution has a qualifying holding and such company and its executive are not considered at preparation of a consolidated financial report;

-prudential standards - economic standards established by the National Bank of Tajikistan with a view of regulation of activities of credit institutions, which observance shall be obligatory for execution by credit institutions;

- forfeiting - financing trade by bill discounting without obligations of a trader;

-factoring - financing with assignment of a money claim.

## **Article 2. Legislation of the Republic of Tajikistan on Banking Activities**

The legislation of the Republic of Tajikistan on banking activities shall be based on the Constitution of the Republic of Tajikistan and consists of the present Law, the Law of the Republic of Tajikistan “On the National Bank of Tajikistan” and other international legal acts recognized by Tajikistan.

## **Article 3. Banking Operations and Other Transactions of Credit Institutions**

1. Banking operations concern:

-attraction of deposits and savings;

-extending credits (whether secured or not), including:

a) consumer, mortgage and inter-bank loans;

b) factoring;

c) financing commercial transactions, including forfeiting;

- opening and maintaining bank accounts;

- buying and selling for its own account or for account of customers of :

a) money market instruments (including checks, promissory notes, letters of guarantee and certificates of deposits);

b) foreign currency;

c) exchange and interest rate instruments;

d) stocks and other transferable securities;

e) forward contracts, swap agreements, futures, options and other derivatives, relating to currencies, stocks, bonds, precious metals and stones or exchange and interest rates;

- providing bank guarantees, contingent liabilities, including guarantees and letters of credit for its own account and for the account of customers;

- providing clearing, settlement and transfer services connected with monetary instruments, securities, payment orders and other payment instruments (including checks, credit, debit and other payment cards, traveler's cheques, bills, wire transfers and pre-authorized debits and credits);

-providing services of a financial agent in monetary market;

-safekeeping and administration of valuables (money, securities, metals, jewelry, etc);

-providing trust services (managing cash, securities, etc., for favor and on the instructions of the principal);

-any other operations that shall be incidental to operations indicated in this Article and envisaged by the legal standard acts of the National Bank of Tajikistan;

-cash operations: reception, recalculation, change, exchange, packing and storage of banknotes and coins;

-collection and transfer of banknotes, coins and valuables.

2. Procedures of transactions specified in the part 1 of this Article shall be established by legal standard acts of the National Bank of Tajikistan.

3. Credit institutions shall be entitled to implement the following banking operations in addition to those stipulated in the part 1 of this Article:

-providing guarantee envisaging execution of the liability before the third party;

-financial leasing;

-operations with precious metals and stones according to the legislation;

-providing services as the financial agent;

- providing services as an adviser or a financial adviser;

-services on providing financial and credit information.

4. A credit institution shall be prohibited to be engaged in production, trade and direct insurance activity.

#### **Article 4. Relationships of Credit Institution and the State**

1. A credit institution shall not be responsible for the state liabilities and the state shall not be responsible for the liabilities of credit institution, unless they have taken such responsibilities.

2. A credit institution shall not be responsible for the liabilities of the National Bank of Tajikistan, and the National Bank of Tajikistan shall not be responsible for the liabilities of credit institutions, unless they have taken such responsibilities.

3. Government authorities shall not have the right to interfere with the activities of credit institutions.

4. Opening of a credit institution, its branch or a representative office in the Republic of Tajikistan, and appointment of the executives shall not require approval of local executive government authorities.

5. A credit institution may fulfill certain instructions of the Government of the Republic of Tajikistan and government authorities, implement transactions and settlements with the national and local budget funds based on a special agreement on competitive basis. Such an agreement must envisage mutual rights and obligations of parties, control of targeted use of budget funds, as well as procedure of mutual settlements.

#### **Article 5. Associations (Unions) of Credit Institutions**

1. Credit institutions with purpose of protection of their interests may establish non-profit associations (unions).

2. Through such an association (unions) the credit institutions- members may co-ordinate their activities, foster ties between domestic and foreign credit institutions, exchange bilateral scientific information and professional achievements, represent recommendations on banking activities to the National Bank of Tajikistan, the Government of the Republic of Tajikistan and other government authorities

### **CHAPTER 2. STATE REGISTRATION OF CREDIT INSTITUTIONS AND LICENSING OF BANKING ACTIVITIES**

#### **Article 6. Establishment and State Registration of Credit Institutions**

1. Establishment of credit institutions shall be implemented in the order established by the Law of the Republic of Tajikistan “On Joint-Stock Companies”, the Law of the Republic of Tajikistan “On Limited Liability Companies” and other laws taking into account the present Law.

2. Banks, except for the state bank shall be established in the form of joint-stock companies.

3. The state registration of credit institutions shall be implemented in procedure stipulated by the legislation of the Republic of Tajikistan.

### **Article 7. Licensing of Banking Activities**

1. Banking activities in the Republic of Tajikistan shall be implemented in accordance with the license for banking activities (hereinafter – license).

2. A license shall be issued by the National Bank of Tajikistan in written form for an indefinite period of time and non-transferable in accordance with the Law.

3. The National Bank of Tajikistan shall have the right to implement banking activities without license on the base of the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”.

4. Credit institutions shall be entitled for banking activities as of the date of the license.

5. Branches of foreign banks shall receive licenses only when their head offices are subject to comprehensive banking supervision and regulation by a relevant authority of the country where the head offices are located.

6. Subsidiaries and branches of foreign banks shall be subject to supervision and regulation in accordance with requirements set by the banking legislation in the same way as domestic banks.

7. The National Bank of Tajikistan may set restrictions to subsidiaries and branches of foreign banks in implementing banking activities, if similar restrictions are set to subsidiaries and branches of domestic banks in relevant countries abroad.

### **Article 8. Interdiction of Banking Activities**

1. No person in the Republic of Tajikistan may engage in banking activities without a license issued by the National Bank of Tajikistan, unless otherwise envisaged in this Law.

2. The National Bank of Tajikistan shall have the right to require liquidation of a legal entity engaged in banking transactions without a license, in accordance with the procedure established by the legislation.

3. Provisions of this Law shall not apply:

- microfinance institutions regulated by the Law of the Republic of Tajikistan "On Microfinance Institutions",

- persons not receiving extra charges for extended loans.

- -commercial organization, which is not a credit institution, has the right to transfer money without the license on the instructions of individuals without opening bank accounts (except for postal orders) as a payment of charges for telecommunication services, premises and utilities subject to the contract made with credit institution. According to the concluded contract the commercial organization, which is not a credit institution undertakes on its own behalf, but for the account of credit institution to transfer money on the instructions of individuals, without opening bank accounts (except for postal orders), as a payment of charges for telecommunication services, premises and utilities to the bank account of the person providing such services (performing such works).

4. The words "credit institution", "bank", "non-bank credit institution" or resulting words in any wording in respect of activities or services without a license issued by the National Bank of Tajikistan cannot be used, unless such use is authorized or allowed by the law or international treaties, or unless the context clarifies that banking activities are not involved.

5. A representative office of a bank shall not use in its title the words "credit institution" or "bank" except when the words "credit institution" or "bank" are an inalienable part of the title of a credit institution or a foreign bank, to which they are related, provided that a word "representative office" is added.

6. A credit institution in the Republic of Tajikistan should have:

- an official title and its abbreviation in the official language showing its legal form of organization;

- titles of activities recorded in the official language and one of the foreign language;
- a seal showing the title in the official language and one of the foreign languages.

7. The National Bank of Tajikistan while considering the application for license shall be obliged to reject the name of credit institution if such name already exists in the Register of the credit institutions.

## **Article 9. Documents Required for Obtaining a License**

1. Credit institutions, prior to the state registration and obtaining a license, must submit to the National Bank of Tajikistan an application, documents and the following information in official language and receive the preliminary opinion of the National Bank of Tajikistan:

- notarized copy of the constituent documents indicating the amount of the authorized capital;
- information form with the last name, the first name, the patronymic, citizenship, permanent place of residence, business or profession, education, detailed information on the record of service of each executive;
- copy of the document on higher economic education of executives;
- copy of the document confirming professional suitability and reliability of each executive;
- information form with the last name, first name, patronymic, citizenship, permanent place of residence, business or profession of the qualified holding, including ultimate beneficiary owner of the qualified holding confirming their financial standing;
- information form of legal sources of money funds invested to the authorized capital;
- copies of the last three financial statements of a legal entity – owner of a qualified holding with the auditors' opinions;
- list of shareholders and ultimate beneficiary owners of shares, with the location address, and the number of shares;
- written declaration from each qualifying holding and executive on no conviction, no bankruptcy file, no restrictions in professional activities;

- a business-plan envisaging business objectives and types of activities, description of the organizational structure and internal control system, including adequate measures of anti-money laundering and financing terrorism, as well as forecast on the balance sheet, revenues and expenditures, and money turnover for the next three years;

- for each qualifying holding, including the ultimate beneficiary owner of such a qualifying holding, a list of undertakings participating in capital indicating their share and location;

- information on the location of the head office and any other location in or outside the Republic of Tajikistan, where banking operations are implemented;

- document certifying payment of a fee for consideration of an application;

- document certifying that the bank supervision authority of the country, where a foreign (principal) bank or a holding of a credit institution are established and operate, does not object implementation of banking activities by a credit institution in the Republic of Tajikistan and exercise consolidated banking supervision of the applicant.

2. The National Bank of Tajikistan may request additional information for consideration of the application.

## **Article 10. Licensing Procedure**

1. Within three months from the date of an application, the National Bank of Tajikistan shall provide its opinion to the credit institution on the compliance or incompliance of submitted documents with the provisions of this Law.

2. For the opinion, the National Bank of Tajikistan, having verified submitted documents, shall request for required additional information from the credit institutions, other government authorities and a relevant foreign supervision authority.

3. The National Bank of Tajikistan shall grant a license on being satisfied to a credit institution within one month from the date of state registration.

4. In exceptional circumstances, the National Bank of Tajikistan may extend the term envisaged in the part 1 of this Article to two months given that it notifies the applicant on the reasons of such a delay.

5. In the case of a negative opinion, the National Bank of Tajikistan shall send to the applicant a written response with a description of the reasons for the denial. In all cases, the applicant shall not be entitled to a refund for the application fees paid.

6. Based on its legal standard acts, the National Bank of Tajikistan shall determine and publish requirements applied in considering application for licensing.

7. The National Bank of Tajikistan shall grant a license on being satisfied regarding:

- legality and validity of information and documents submitted;
- satisfactory financial situation and activities of shareholders;
- identity and character of qualifying holders and executives as fit-and-proper persons;
- adequacy of staffing, operational and financial resources, and capital structure of the credit institution to cover the obligations required for licensing;
- soundness of transactions indicated in the charter;
- viability of the business-plan;
- intentions of the credit institution to maintain operations at a fixed address in the Republic of Tajikistan;
- implementing adequate level of prudential supervision on consolidated basis by the relevant foreign supervisory authority.

8. After the decision to grant a license, the credit institution, within one month from such a decision, shall deposit the remaining part of the authorized capital and pay the license fee to the relevant accounts with the National Bank of Tajikistan. After the compliance with the indicated requirements by the credit institution, the National Bank of Tajikistan shall issue a license within three business days.

9. Decisions of the National Bank of Tajikistan to grant a license shall be published in its publication.

10. Credit institutions shall further notify the National Bank of Tajikistan on any changes regarding documents submitted for licensing.

## **Article 11. Establishment of Branch and Other Structural Subdivisions of Domestic Credit Institutions**

1. Domestic credit institutions must obtain written consent of the National Bank of Tajikistan to open branches. To this end, domestic credit institutions shall submit to the National Bank of Tajikistan the following documents and information:

- notarized copy of the regulations of the branch with the list of banking transactions allowed to the branch;
- detailed information on the executives of the branch as defined by this Law.

2. A decision to allow opening a branch shall be considered by the National Bank of Tajikistan within two months.

3. The National Bank of Tajikistan denies opening a branch in the following cases:

- incompliance of candidates to the position of branch managers with qualification requirements;
- incompliance of buildings and equipment of the branch with the legal standard acts of the National Bank of Tajikistan;
- failure of the credit institution to comply with the laws, regulations and prudential regulations set by the National Bank of Tajikistan.

4. Credit institutions must notify the National Bank of Tajikistan on the closure of branches.

5. Credit institutions and their branches may establish other structural subdivisions (banking service centers, money transfer outlets, currency exchange outlets, etc.) outside their location as defined by the National Bank of Tajikistan.

6. The above structural subdivisions perform on behalf of the credit institutions certain banking transactions listed as defined by the legal standard acts of the National Bank of Tajikistan.

## **Article 12. Establishment of Branch of a Foreign Bank**

1. The National Bank of Tajikistan may grant a license to a foreign bank to open a branch in the Republic of Tajikistan to perform banking activities.

2. An application for a license shall be presented to the National Bank of Tajikistan in writing by foreign banks in official language with the following documents attached:

- decision of a foreign bank to open a branch in the Republic of Tajikistan, registration documents indicating the location of a foreign bank and the branch to be opened;

- information with the full name, nationality, citizenship, permanent place of residence, business or profession, education degree, detailed information on the length of service for each executive of the branch;

- a copy of a document certifying higher economic education of an executive;

- a copy of the three last annual reports of a foreign bank with the auditors' opinion;

- list of shareholders and ultimate beneficial owners indicating their location, number of shares and copies of shareholder registration documents;

- written confirmation of the executive on no conviction, no bankruptcy, no restrictions in professional activities;

- a business-plan envisaging business objectives and types of activities, description of the organizational structure and internal control system, including appropriate measures on anti-money laundering and financing terrorism, as well as forecast on balance accounts, revenue and expenditure accounts, and money turnover for the next three years;

- information on location of the branch;

- a document confirming payment of the fee for the review of application;

- written consent of a foreign supervisory authority of the country, where the foreign bank was established, to open a branch in the Republic of Tajikistan, and implement a consolidated banking supervision of the foreign bank's activities;

- guarantees of the executive management of the foreign bank on the liabilities of the branch resulting from banking transactions envisaged in the license. Type of currency and storage of such a guarantee amount shall be determined by the National Bank of Tajikistan.

2. The National Bank of Tajikistan may require an additional list of documents not stipulated in the part 2 of this Article for the review of application.

### **Article 13. Establishment of Representative Office of Credit Institutions**

1. Credit institutions must obtain consent of the National Bank of Tajikistan for opening a representative office.

2. To open a representative office, credit institutions shall submit the following documents to the National Bank of Tajikistan:

- decision of a relevant body of a credit institution to open a representative office in the Republic of Tajikistan;
- written information of a supervisory authority of a state confirming that a foreign credit institution that applied for implementation of banking transactions has a license.

3. Applications for opening representative offices shall be considered by the National Bank of Tajikistan within one month.

### **Article 14. Features of Establishment of Branch, Representative Office and Subsidiary Bank of Credit Institutions outside the Republic of Tajikistan**

1. No domestic credit institution may open branch or representative office or establish subsidiary bank outside the Republic of Tajikistan without obtaining prior authorization of the National Bank of Tajikistan.

2. Credit institutions shall notify the National Bank of Tajikistan on any change concerning a location or termination of activities of their branch, representative office or subsidiary bank.

### **Article 15. Register of Credit Institutions**

1. The National Bank of Tajikistan shall maintain records of credit institutions.

2. The register of credit institutions shall record the following information: the name, location, state registration certificate number, branch registration certificate number, date of issue and withdrawal, license number, date of issue and withdrawal.

3. The register of credit institutions shall contain additional information as the National Bank of Tajikistan shall require.

4. The list of credit institutions, including the name, location and type of license shall be published annually by the National Bank of Tajikistan each January in mass media.

5. Any changes in the list of credit institutions during the year shall be systematically published by the National Bank of Tajikistan in mass media.

### **Article 16. Fees for Services and Licensing Charges**

The National Bank of Tajikistan shall charge an application fee for a license equivalent to 50 settlement indicators, and for granting a license – equivalent to 100 settlement indicators, for services to non-bank credit institutions a fee equivalent to 25 settlement indicators and for granting a license – equivalent to 50 settlement indicators.

### **Article 17. Voluntary Termination of Banking Activities**

1. No credit institution may voluntarily terminate its operations without first obtaining prior approval of the National Bank of Tajikistan to do so.

2. A credit institution may be liquidated after the voluntary termination of its operations has been approved by the National Bank of Tajikistan and a written request for the revocation of the license has been submitted to the National Bank of Tajikistan.

3. Revocation of the license shall not be granted unless the National Bank of Tajikistan determines that the credit institution has fulfilled the obligations to its depositors, creditors and employees.

### **Article 18. Revocation of License**

1. A license may be revoked only by decision of the National Bank of Tajikistan on one or more of the following grounds:

- the credit institution has not used the license within 12 months after the date of its effectiveness or ceased banking operations for more than six months;

- the operations of the credit institution are conducted in a risky or unsound manner;

- the credit institution violates laws and legal standard acts of the National Bank of Tajikistan, or any licensing conditions and requirements that sufficiently impact on its financial stability;

- the credit institution, foreign bank, credit institutions holding company, of which the banks and non-bank credit institutions are subsidiaries, engaged in criminal activities constituting money-laundering or financing terrorism, or had their licenses revoked;

- bank supervision is hindered because all or part of the credit institution has been moved to another country;

- bank supervision is hindered because the credit institution is a member of a group of companies, or because the credit institution is a subsidiary of a foreign bank or a credit institution holding company that is not adequately supervised;

- a foreign supervisory authority of a foreign bank or the credit institution holding company, of which the bank and other credit institutions are subsidiaries, has appointed a temporary manager or a liquidator for a foreign bank or bank holding company.

2. The National Bank of Tajikistan shall revoke a license in the following cases:

- at the time of declaring bankruptcy of a credit institution by the court decision;

- if it is established that the license was obtained on the ground of fraudulent documents or other misleading information;

- pursuant to the part 2 of the Article 17 of this Law.

3. A decision of the National Bank of Tajikistan to revoke a license pursuant to this Article shall be in writing and include the grounds, on which the decision is taken.

4. Such a decision shall be issued immediately, within the day by the National Bank of Tajikistan to a credit institution. The decision shall take effect at the time it is served on the credit institution concerned, unless the decision specified another date for it to enter into force that shall not be more than 30 days.

5. The requirement of service of such decision on a foreign bank shall be met by its branch or a representative office addressed by the decision.

4. No license shall be revoked on basis other than one of those envisaged in the Law.

5. A decision to withdraw a license shall be published by the National Bank of Tajikistan in mass media within one week from the date such decision shall have been taken.

## **CHAPTER 3. CAPITAL**

### **Article 19. Capital of Credit Institutions**

1. Authorized capital of a credit institution shall be formed in national currency.

2. The Board of the National Bank of Tajikistan shall determine the minimum authorized capital for a newly established credit institution in national currency.

3. The minimum regulatory capital of the existing credit institutions shall be established by the Board of the National Bank of Tajikistan.

4. Resolution of the Board of the National Bank of Tajikistan on changing the minimum authorized capital requirement and minimum regulatory capital requirement shall take effect not earlier than in 90 days after its official publication.

5. For the newly opened credit institutions – banks and non-bank credit institutions the minimum authorized capital in effect at the day of license application shall apply.

6. The regulatory capital of a non-bank credit institution that approached the National Bank of Tajikistan to acquire a status of a bank shall be no less than the minimum authorized capital in effect for newly opened bank at the day of application for licensing.

7. Procedure of calculating the regulatory capital and its main elements shall be determined in the legal standard acts of the National Bank of Tajikistan in accordance with the international banking supervision standards.

8. Credit institutions (except for state banks) may not form and replenish capital from the state budget funds, the state off-budget funds, grants to the Government of the Republic of Tajikistan and external borrowings.

9. A credit institution may not distribute dividends to shareholders from the net income, if such an action causes decline of the regulatory capital below the lower limit.

10. A credit institution may not distribute dividends to shareholders from its net income prior to covering all administrative costs.

#### **Article 20. Net Domestic Assets Ratio for Branches of Foreign Banks**

The National Bank of Tajikistan shall require that branches of foreign banks in Tajikistan maintain an excess of assets over liabilities to the residents of the Republic of Tajikistan.

### **CHAPTER 4. MANAGEMENT OF CREDIT INSTITUTIONS**

#### **Article 21. Management Bodies of Credit Institutions**

1. Procedure of opening a credit institution and operations of its agencies shall be determined in the Law of the Republic of Tajikistan “On Joint-Stock Companies”, the Law of the Republic of Tajikistan “On Limited Liability Companies” and other laws taking into account provisions of this Law.

2. Credit institutions shall be managed by the following bodies:

- supreme body of the credit institution - General Meeting of Shareholders (participants)

- management body – Supervisory Board, which shall be established by the General Meeting of Shareholders (participants);

- executive body that shall be established by the Supervisory Board

3. Management bodies of the state credit institutions and their authorities shall be determined by the Government of the Republic of Tajikistan taking into account provisions of this Law.

4. The Supervisory Board shall be responsible for the determination and implementation of the general policies of the credit institution. The Supervisory Board shall establish risk management standards, investment policies, minimum internal prudential ratios, and internal control system of the credit institution.

5. The Supervisory Board shall have not less than five members. The members of the Supervisory Board shall be appointed for a period of four years at the General Meeting of Shareholders. Members of the Board of Directors may be reelected during the next periods of the same length.

6. The Supervisory Board may be selected from among the shareholders, including owners, as well as outside experts with job-related experience. The Supervisory Board shall select a chairman from among its members.

7. Members of the Supervisory Boards must:

- possess legal capacity, functional authority and be fit and proper persons;

- have a higher education;

- not be an employee of another credit institution, unless it is an affiliated company;

- not be an administrator, deputy, head of a structural unit of a government agency.

8. At least one quarter of the members of the Supervisory Board must have at least three years of experience in banking.

## **Article 22. Management of Executive Body of Credit Institutions**

1. Direct management of the day-to-day operations of the credit institution shall be carried out by its executive body – the Board (collegial

executive body) and by the chairman of the credit institution (one-man executive body) or by the Managing Board and chairman of the credit institution. One of the types of this executive body of the credit institution shall be selected and established by the Supervisory Board. If the Board and the chairman of the credit institution is established as an executive office simultaneously that the chairman shall perform functions of the chairman of the Board.

2. The Executive body of the credit institution shall be responsible for the implementation of decisions of the Supervisory Board and for the management of the day-to-day operations of the credit institution.

3. Subject to the provisions of the part 5 of this Article, the Supervisory Board shall appoint the chairman of the credit institution.

4. A member of the Managing Board of the credit institution may not be selected as a member of the Supervisory Board. A chairman of the Supervisory Board may not be appointed as the chairman of the credit institution.

4 Executives of the credit institution shall comply with the following criteria:

- be a fit and proper person for the job;
- possess higher economic education, competence, have required expertise, and at least five years of experience in banking, of which three years as the manager of a structural economic unit of a credit institution;
- possess sufficient knowledge of banking legislation and legal standard acts of the National Bank of Tajikistan.
- must not be an executive or an employee of another credit institution;
- engage full time in this credit institution;
- reside in the Republic of Tajikistan.

### **Article 23. Appointment and Dismissal of Executives**

1. Executives of a credit institution shall be appointed at the approval of the National Bank of Tajikistan.

2. Deputy chairmen, the chief accountant, managers and chief accountants of the branches of the credit institution shall be appointed by the

chairman of the credit institution as agreed with the Supervisory Board of the credit institution.

3. The National Bank of Tajikistan, subject to determination of the candidates as fit and proper persons pursuant to the part 5 of the Article 22 of this Law, and including attestation, shall provide a written approval. A procedure of attestation shall be determined by the legal standard acts of the National Bank of Tajikistan.

4. Credit institutions shall notify the National Bank of Tajikistan of the dismissal of executives, as well as the reasons for dismissal within three days of the dismissal date.

5. An executive, who is dismissed at the request of the National Bank of Tajikistan pursuant to Article 48 of the Law of the Republic of Tajikistan "On the National Bank of Tajikistan", may not be selected and appointed further as a member of the Supervisory Board, an executive of another credit institution.

6. The chairman, his deputies, the chief accountant of the credit institution, whose license has been revoked, may not be appointed as an executive of another credit institution.

7. The above mentioned persons, after the expiration of five years following the dismissal, may be reappointed as executives at the approval of the National Bank of Tajikistan.

#### **Статья 24. Audit Committee and the Chief Internal Auditor of a Credit Institution**

1. A credit institution must establish an audit committee.

2. Members and the chairman of the committee shall be selected by the Supervisory Board of the credit institution for the period of four years.

3. The chairman of the Supervisory Board, chairman of the credit institution or members of the Managing Board of credit institution may not be members of the audit committee.

4. The audit committee shall function under the Supervisory Board of the credit institution and shall have the following duties and powers:

- review and recommend the approval of annual audit plan and accounting and risk management controls in the credit institution;

- recommend an external auditor for appointment pursuant to the Article 45 of this Law;
- review an external auditor's report on the financial reports of the credit institution and to report any revealed weaknesses to the Supervisory Board prior to the approval of the financial reports by the Supervisory Board ;
- request reports from the chief internal auditor of the credit institution;
- monitor compliance of the credit institution with the laws and legal standard acts and report to the Supervisory Board;
- review reports of the credit institution to be submitted to the National Bank of Tajikistan;
- report on any matters raised by the Supervisory Board to the audit committee;
- review operations and transactions of the credit institution on the basis of plans adopted by the audit committee, at the request of the Supervisory Board, at the request of shareholders of the credit institution, who hold more than 10 percent of voting shares, or as specified by the Charter of the credit institution;
- report on its activities at least annually to the general meeting of shareholders.

5. Decisions of the audit committee shall be adopted by the majority vote of the members present. When the vote is evenly divided, the chairman's vote shall be the deciding vote.

6. An internal audit service headed by the chief internal auditor shall function in the credit institution.

7. The chief internal auditor of the credit institution must comply with the requirements specified in the part 5 of the Article 22 of this Law.

### **Article 25. Disclosure of Personal Interest**

1. The executive of the credit institution must provide information in writing to the Supervisory Board regarding any personal financial interest, whether direct or indirect, and that of his/her family members, upon election or appointment and annually thereafter.

2. Whenever matters related to personal financial interest come up for discussion by the Supervisory Board or in any other committee or working group of the credit institution with the decision making authority, the

executive concerned disclosing such information at the beginning shall not thereafter participate in the discussion. Discussion of given matters shall take place without his/her involvement. Such an executive's participation shall not be counted for the purpose of constituting a quorum.

### **Article 26. Procedures of Acquiring Qualifying Holding**

1. A qualifying holding in a credit institution shall be acquired at the approval of the National Bank of Tajikistan.

2. Any person acting directly or indirectly, through or in concert with other persons, who proposes to acquire a qualifying holding in the credit institution, shall provide the National Bank of Tajikistan with a written application.

3. The application for the acquisition of a qualifying holding shall include:

- the full name, nationality, permanent place of residence, business and profession of every proposed owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding;

- information for each proposed owner of a qualifying holding, including the ultimate beneficial owner of such a qualifying holding indicating the full name, nationality, permanent place of residence, business and profession of every proposed owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding confirming their financial standing;

- in the event that a proposed owner of a qualifying holding, including the ultimate beneficial owner of such a qualifying holding, is a legal entity, copies of the latest audited annual balance sheets and profit and loss accounts;

- a list and location of every undertaking, in which each proposed owner of a qualifying holding, including the ultimate beneficial owner of such a qualifying holding, holds a share specifying the size of the share;

- terms and conditions of the proposed acquisition of a qualifying holding;

- legal source of funds to be used in the acquisition;

- any plans or proposals regarding major changes in the business, corporate structure or management of the credit institution;

- such other information as the National Bank of Tajikistan may require.

4. The National Bank of Tajikistan shall assess the expected effects of changing the owner on the financial soundness of the credit institution and satisfy itself as to the identity of the proposed owners, including the ultimate beneficial owners, and within 60 days from the date of receiving an application, the National Bank of Tajikistan shall notify the applicant or applicants in writing of its consent or decline of the application. Grounds for rejection must be provided.

5. When the National Bank of Tajikistan does not communicate its decision within the specified period, the decision of the National Bank of Tajikistan shall be deemed to have been granted. The National Bank of Tajikistan shall have the right to require unwinding any such transaction if the financial position and reputation of the owners is subsequently established by the National Bank of Tajikistan as unsatisfactory.

6. The National Bank of Tajikistan shall not approve the application if the financial position, source of funds, reliability of any person, directly or indirectly acquiring a qualifying holding, including the ultimate beneficial owner, is established by the National Bank of Tajikistan to be unsatisfactory, or if such an acquisition would substantially restrict competition, jeopardize the financial sustainability of the credit institution, or endanger the interests of the depositors or the credit institution.

7. Any person acting directly or indirectly, through or in concert with other persons, who proposes to increase an existing qualifying holding in a credit institution in a manner that would reach 10%, 20%, 33%, 50%, or 75% of the capital or the voting share respectively, or more, of the credit institution shall give at least 30 days prior notice in writing to the National Bank of Tajikistan.

8. Any credit institution that becomes aware of a proposed acquisition of a qualifying holding or of a proposed increase in an existing qualifying holding in the credit institution shall give immediately a written notice of the fact to the National Bank of Tajikistan

9. When a credit institution becomes aware that its owners, in particular, owners of qualifying holding, are no longer fit and proper persons, it immediately notify the National Bank of Tajikistan of this fact in writing.

### **Article 27. Reorganization of Credit Institutions**

1. Reorganization (merger, take-over, split-off, separation, conversion) of a credit institution shall be performed only with the prior approval of the National Bank of Tajikistan.

2. A credit institution that intends to engage in reorganization shall give at least 30 days prior notice of this fact to the National Bank of Tajikistan, and provide required information.

3. The National Bank of Tajikistan shall assess the financial and managerial resources and future prospects of the existing and newly established credit institutions, and shall not approve the proposal unless the credit institution satisfies criteria for licensing. The National Bank of Tajikistan shall not approve a proposed transaction referred to in the part 1 of this Article unless the NBT is of the view that the provisions of the antimonopoly legislation are complied with.

## **CHAPTER 5. REGULATION OF ACTIVITIES OF CREDIT INSTITUTIONS**

### **Article 28. General Principles of Activities of Credit Institutions**

1. Credit institutions shall operate in a sound and prudent manner and in accordance with the provisions of this Law, legal standard acts and licenses issued by the National Bank of Tajikistan.

2. Credit institutions shall:

- maintain adequate capital and liquidity;
- make adequate provision for depreciation of assets, for discharge of liabilities and for losses, and the loan loss provisions pursuant to the legal standard acts of the National Bank of Tajikistan;
- arrange adequate accounting and other records;
- ensure sufficient and effective risk control;
- diversify assets depending on the risk of loss.

3. Credit institutions shall not establish group structures that hinder effective supervision. The National Bank of Tajikistan shall issue regulations for the affiliates of credit institutions, in particular, concerning the requirements for transactions between the credit institution and any affiliates

thereof that are not subject to consolidation in the preparation of financial statements.

4. The National Bank of Tajikistan shall apply regulations set in accordance with the requirements of this Chapter for domestic credit institutions to branches of foreign banks.

5. Whenever a chairman of the credit institution discovers that the capital of the credit institution is less than the minimum capital required by the National Bank of Tajikistan, he shall promptly notify the National Bank of Tajikistan on this fact in writing.

### **Article 29. Prudential Regulations**

1. The National Bank of Tajikistan shall establish the following prudential regulations mandatory for credit institutions:

- minimal authorized capital for newly established banks and non-bank credit institutions;
- minimal regulatory capital for existing banks and non-bank credit institutions;
- maximum non-monetary part of the authorized capital;
- limit on exposure to a single borrower or a group of related borrowers;
- capital adequacy ratio;
- current liquidity ratio;
- foreign exchange, interest and other risks;
- use of the equity of banks and non-bank credit institutions to purchase shares of legal entities;
- limits on the size of loans, guarantees provided by banks and non-bank credit institutions to their shareholders.

2. The National Bank of Tajikistan shall set prudential ratios and procedure of their calculation for credit institutions and apply in its prudential supervision in accordance with the international standards, best practices, and its own legal standard acts.

3. The National Bank of Tajikistan shall specify requirements determined in accordance with the standards of this chapter and applied to credit institutions and their subsidiaries on basis of integrated consolidated supervision.

4. The National Bank of Tajikistan may set other prudential regulations applied in international practice in regulating banking activities.

5. The National Bank of Tajikistan may set requirements regarding the interest rate, maturities and other conditions applicable to loans and attracting funds (including deposits) or off-balance-sheet liabilities.

6. The National Bank of Tajikistan may set differentiated requirements regarding risk management and procedures of calculation by types of credit institutions.

7. Decision of the National Bank of Tajikistan to change standards and procedure of their calculation shall take effect not earlier than three months after approval.

8. A credit institution shall pursue its internal policy following minimal and maximal risks, risk management rules, investment and credit policies, as well as other prudential requirements regulating capital, assets, off-balance-sheet accounts and reserves.

9. A credit institution shall develop and implement internal policy of controlling prudential regulations in the following areas:

- liquid resources in relation to the total assets and liabilities or change in their value (including guarantees and collateral received), provided that the credit institution shall be entitled to deposit part of its liquid assets with the National Bank of Tajikistan;

- maximum aggregate amount of all or certain credits and investments;

- classification and evaluation of assets, provisions to be made on the basis of such classification and evaluation, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash;

- conditions concerning acceptance of deposits, savings and extension of credit, including terms and interest;

- prohibitions, restrictions or conditions concerning:

- a) types of credits, investments and liabilities, matching as to maturity and interest in respect of assets and liabilities, including contingent assets and liabilities;

- b) open exposure:

- in foreign currency, precious metals and stones;

- exchange and interest rate instruments;

- stocks and other transferable securities;
- forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals and stones, or exchange rate and interest rates, when the risk is not hedged and exceeds the sets ratios.

### **Article 30. Risk of Large Exposures**

1. No credit institutions shall grant credits to legal entities or individuals in the following cases, if:

- the total outstanding principal amount of all credits of the credit institution to a given person exceeds five percent of the regulatory capital of the credit institution, except when a credit institution received a prior written consent of the National Bank of Tajikistan;

- the total outstanding principal amount of large credit exposures of the credit institutions to a given person exceeds twenty percent of the regulatory capital of the credit institution;

- the total outstanding principal amount of large credit exposures of the credit institution exceeds the threefold of the regulatory capital of the credit institution.

2. Limitations specified in the part 1 of this Article shall not apply to any principal amount of credit that is fully secured by readily marketable collateral, if, as a result thereof, the outstanding principal amount of its secured credits to the person receiving such credit exceeds fifteen percent of the regulatory capital of the credit institution.

3. The provisions of the parts 1 and 2 of this Article shall not apply to the following transactions:

- transactions with, or guaranteed by, the Government of the Republic of Tajikistan;

- transactions between credit institutions with a maturity of one year or less.

4. For the purposes of applying this Article it shall be established that a person in this Article shall be deemed to include another person, with whom such person is connected, directly or indirectly, in such a way that the financial soundness of one of them may affect the financial soundness of the

other or others, or the same factors may affect the financial soundness of some or all of them, or if, depending on their relationship the other person is in fact responsible for the credit repayment to the credit institution.

### **Article 31. Credit to Related Persons**

1. Credit institutions may not extend credit to related persons:
  - if the credit and its financial terms and conditions were not approved by the Supervisory Board or in the case of a branch of a foreign bank, the branch manager;
  - if the interest for credit is below the current market interest rates for such credits;
  - if the credit is extended to an executive of the credit institution, including any credits extended by one or more subsidiaries of the credit institution, exceeds thirty percent of the annual income of that person;
  - if the aggregate amount of all credits extended to related persons exceeds ten percent of the regulatory capital of the credit institution.
2. Such percentage limits shall not apply to any credit that is secured by immovable property located in the Republic of Tajikistan, the cost of which is at least one hundred and thirty percent of the principal amount.
3. Credit institution shall promptly report to the audit committee on every credit extended to related persons. If a credit institution extends credit to a related person in violation of the provisions of the part 1 of this Article, such credit must be immediately repaid. Members of the Supervisory Board or a manager of a branch of a foreign bank, as the case may be, shall bear personal responsibility, several and joint, for payment of the principal amount and interest, and other charges on any credit extended with their knowledge and consent in violation of the part 1 of this Article.

### **Article 32. Foreign Currency Exposure**

Through its legal standard acts the National Bank of Tajikistan shall set maximum foreign currency exposure and the calculation procedure for credit institutions entitled for banking foreign currency transactions.

### **Article 33. Investment Restrictions**

1. It shall be prohibited to a credit institution without the NBT's written approval to invest in stocks, equity-linked bonds, and any other securities in the amount that exceeds ten percent of the regulatory capital. To the extent that such investment exceeds ten percent of the regulatory capital the credit institution shall be obliged to sell such securities provided that no losses occur within a short period of time (one month at the latest), and, in any case, within two years of their acquisition.

2. At the request of the credit institution, this term may be extended by the National Bank of Tajikistan for one more year.

3. It shall be prohibited for any credit institution to possess shares of another credit institution without a prior written approval of the National Bank of Tajikistan, except for the shares acquired by the credit institution in the result of bank transactions. In this case, if the National Bank of Tajikistan does not allow the credit institution to keep such shares, the credit institution shall dispose shares in the shortest possible time (one month at the latest) without incurring a loss, and, in any case, within two years of acquiring at the latest.

4. Credit institutions shall not have the right to possess real estate other than real estate essential to the conduct of its operations and for the social needs of its employees, including housing, as well as real estate acquired by the credit institution in the result of mortgage lending.

5. The credit institution shall be obliged to dispose of any real estate transferred to it other than mortgage lending as soon as practicable (one month at the latest), without incurring losses, and, in any case, within two years of its acquisition at the latest.

6. Upon request of the credit institution, this period may be extended for two more years by the decision of the National Bank of Tajikistan.

7. Credit institution may lease any idle part of the real estate provided that this does not hinder activities of the credit institution.

8. It shall be prohibited to any credit institution to acquire stocks of a foreign company (non-resident) without obtaining a written approval of the National Bank of Tajikistan, except when the credit institution acquired stocks in the result of banking transactions.

### **Article 34. Operating Regime of Credit Institutions**

1. Credit institutions shall provide services to customers during office hours approved by the National Bank of Tajikistan.

2. In the event that circumstances require, the National Bank of Tajikistan may instruct credit institutions to suspend operations. In such event, credit institutions may resume operations only at the decision of the National Bank of Tajikistan.

### **Article 35. Suspicious Transactions**

1. If a credit institution learns that execution of any transaction, receipt or payment of any amount of money pertains or may pertain to any crime or illegal act, the credit institution shall immediately notify the National Bank of Tajikistan and the law enforcement bodies to this effect.

2. Disclosure by a credit institution of any information in good faith under part 1 of this Article shall not be considered a breach of confidentiality, and neither the credit institution nor the National Bank of Tajikistan shall bear any responsibility as a result thereof.

### **Article 36. Restriction on Shares**

1. No credit institution may, on security of its shares, extend any credit, advance, provide a guarantee or other security.

2. A credit institution may purchase its own shares in accordance with the regulations of the National Bank of Tajikistan.

### **Article 37. Dormant Accounts**

1. A bank account shall be considered dormant when its holder had not shown any interest in it for the past ten years, and the amount deposited in this account shall be kept according to the rules set in this Article.

2. On the first business day of the following calendar year, the credit institution shall send by registered post a notice to the holder of the dormant account at the holder's last known address, and publish in at least two newspapers of the Republic of Tajikistan the name of the dormant account holder. If the dormant account holder cannot be located in one month after

such notice and publication, the credit institution shall close the dormant account and transfer the amount to a special account opened with the National Bank of Tajikistan for keeping.

3. The NBT shall invest the special account funds in government securities, or other securities if Government securities are not available. During the next twenty years any owner, who, to the satisfaction of the NBT furnishes proof of ownership, shall be entitled to receive such amounts in the NBT. After the expiration of such period, unclaimed amount of such an account shall be transferred by the NBT to the Ministry of Finance of the Republic of Tajikistan for deposit in the State Treasury.

### **Article 38. Records and Documents Keeping**

1. Credit institutions shall keep on file for at least five years the following documents and records on each transaction:

- customer identification records;
- the application and all contract documents pertaining to the transaction (including credit and guarantee agreements) and decisions of credit institutions approving transactions;
- records of contracts with counterparties (including creditors, debtors and guarantors), and any other documentary evidence, on which the credit institution relied in approving the transaction;
- opening bank accounts;
- such other documents as defined by the legal standard acts of the National Bank of Tajikistan.

2. Records shall be kept in written form. A credit institution may retain records, books, statements, documents, correspondence (letters), cables, notices, and other documents relating to its financial activities in reduced form (microfilm, other electronic data storage, etc.) instead of the original for the period established in the law, to the extent that adequate data recovery system and procedures are in place. Such reduced copies shall have the effect of the original.

3. The National Bank of Tajikistan may adopt legal standard acts on the record keeping system.

### **Article 39. Payment System**

1. Credit institutions may establish cooperative clearing system for the transfer of funds, other instruments and settlements at the approval of the NBT.

2. The NBT shall establish rules and procedures to govern such a system, including settlement forms through its legal standard acts.

3. In the absence of a cooperative clearing system, credit institutions shall implement interbank settlements in accordance with the agreement between the parties, or based on international practice.

## **CHAPTER 6. ACCOUNTING AND FINANCIAL REPORTING**

### **Article 40. Financial Year**

The financial year of credit institutions shall begin on January 1, and end on December 31. For a branch of a foreign bank, the financial year may differ.

### **Article 41. Submission of Reports**

1. For the purpose of regulation and supervision of credit institutions, the National Bank of Tajikistan through its legal standard acts shall determine rules of recording, register, types, procedures of preparation, and terms for the financial statements.

2. Credit institutions shall be obliged to furnish the National Bank of Tajikistan with the following information, along with the financial statements:

- assets and liabilities;
- observance of the prudential regulations;
- accounts and financial indicators;
- separate and consolidated statistical reports;
- such other information that may be requested by the NBT.

2. The NBT may request reports from any of the subsidiaries or affiliates of a credit institution for the consolidated supervision.

### **Article 42. Principles for Accounting and Preparation of Financial Reports**

1. A credit institution shall maintain proper books and records in accordance with the Article 36 of this Law and follow the rules and

procedures of accounting, including full daily accounting of revenues and expenditures.

2. A credit institution shall prepare its financial reports comprising the balance sheet, the profit and loss statement, report on cash flows, and statement of changes in the capital account, in conformity with the International Financial Reporting Standards and other requirements set by the National Bank of Tajikistan.

3. Financial reports shall reflect the real financial position of the credit institution and its branches, as well as the information on the internal control system, including the report of the Supervisory Board of the credit institution.

#### **Article 43. Annual Financial Reports**

1. A credit institution shall prepare financial reports, and in the event of one or more subsidiaries it shall also prepare consolidated financial report.

2. The National Bank of Tajikistan may specify other affiliates of the credit institutions, including companies that are controlled by the company, which controls the credit institution, to which consolidated annual financial reports shall be submitted.

3. Foreign bank branches shall prepare and directly submit accounts and financial reports for their yearly transactions to the NBT.

4. A copy of the audited consolidated financial reports of the credit institution shall be submitted to the NBT within four months after the end of the financial year at the latest.

5. A foreign bank with one or more branches in the Republic of Tajikistan shall submit a copy of the audited consolidated annual financial report to the National Bank of Tajikistan within six months after the end of its financial year at the latest.

#### **Article 44. Publication of Financial Reports**

1. A credit institution shall publish in two national newspapers its audited financial reports, including audited consolidated financial reports, not later than one month after receiving the auditors' opinion.

2. A credit institution, in the head office and in its branches, shall display the audited financial reports and the list of members of the Supervisory Board in a prominent location.

## CHAPTER 7. AUDIT

### Article 45. Audit

1. The NBT shall determine and publish the list of audit firms with a license, qualification and substantial experience in the audit of credit institutions that can audit credit institutions in the Republic of Tajikistan.

2. A credit institution shall appoint an audit firm only from the above list.

3. Provisions of the Law of the Republic of Tajikistan "On Licensing Certain Types of Activities" shall not apply to foreign audit firms included in the NBT list.

4. Provisions of the Law of the Republic of Tajikistan "On Audit" shall apply to audit firms carrying out audit of credit institutions in the Republic of Tajikistan based on the provisions of this Law.

5. An audit company or its member shall not be an owner, an executive, an employee, or a representative of a credit institution. An auditor shall not have interest in the credit institution, except for holding a deposit in the credit institution.

6. Should the audit company have any such interest in the course of the audit, the services of the auditor shall be terminated and the credit institution shall appoint another audit company.

7. An audit company shall not provide services to the credit institution that are linked to the internal control functions of the credit institution, except for occasional training purposes.

8. No credit institution may appoint the same auditor continuously for a period of more than five years without a prior written consent of the NBT.

9. In accordance with International Standards on Auditing, the audit company shall audit a credit institution on a consolidated basis and shall:

- state that the audit company or any of its members do not hold any interest in the bank and comply with the requirement of the part 7 of this Article;

- assist the credit institution in maintaining proper accounting system and procedures;

- assist the credit institution in maintaining proper financial control and risk management systems and procedures;

- at the request of the audit committee of the credit institution, attend meetings of the audit committee;

- within three months after the end of the financial year, prepare an audit opinion as to whether the financial statements are complete, fair and properly drawn up, and present detailed information to the Supervisory Board of the credit institution in accordance with the provisions of this Law;

- provide the Supervisory Board of the credit institution and the NBT with a report stating the auditors' opinion on the loan classification system and provisioning for doubtful assets (including doubtful loans) in accordance with the requirements of the National Bank of Tajikistan indicating weaknesses;

- inform each member of the Supervisory Board and the NBT on any act of an executive, employee or a representative of a credit institution, of which the auditor has become aware that constitutes a violation of the provisions of this Law, or any legal standard act;

- inform each member of the Supervisory Board of the credit institution and the NBT about any irregularity or deficiency in the administration or operations of the credit institution.

6. The audit opinion shall state:

- whether any explanation and information requested from the executives, employees or representatives of the credit institution in the course of the audit were satisfactory;

- the degree of actual adequacy of internal control measures and accounting systems on the part of the credit institution;

- the method applied by the credit institution for keeping books, records, reports and inclusion of operations required for the monitoring, internal and external audit;

- adequacy and performance of the executives of the credit institution;

- deficiencies, comments and recommendations regarding deficiencies, as well as the extent, to which the management applied recommendations and remarks made in previous years;

- the degree of accuracy of records submitted to the NBT, consistency of records, books, accounting systems and regulations with these documents.

11. The credit institution shall send a copy of the audit report to the NBT not later than 30 days after it becomes available.

12. The NBT may request the audit company to provide additional information related to its opinion.

#### **Article 46. Additional Duties**

1. In addition to the duties specified in the Article 45 of this Law, the NBT may impose a duty on an audit firm to:

-submit such additional information in respect of the audit as the NBT considers necessary;

-submit a report, carry out an inspection or implement any procedure specified by the NBT;

-submit a report on the accounting and internal control to the NBT;

-submit an opinion on whether adequate measures to prevent money-laundering or terrorism financing have been adopted by the credit institution and are implemented in accordance with the Law and legal standard acts of the NBT.

2. The costs related to performance of the duties shall be born by the credit institution.

#### **Article 47. Immunities of Audit Firm**

1. An audit firm shall assess professional and banking confidentiality requirements in the credit institution.

2. An audit firm shall not be responsible for the disclosure of confidential information to the NBT in accordance with this Law.

3. Submission of information stipulated in the paragraphs seven and eight of the part 9 of the Article 45 of this Law to the NBT shall not be considered as a breach of confidentiality obligations.

### **CHAPTER 8. CONFIDENTIALITY**

#### **Article 48. Banking Confidentiality**

1. Information regarding the operations and financial position of the customer that became known to the credit institution while providing services

and in relationships with the customer or a third party, disclosure of which may cause material or moral damage, shall be confidential.

Banking confidentiality covers the following information:

- information regarding bank accounts, their owners, availability of funds and transactions of customers on these accounts;
- information regarding money transfers of individuals without opening accounts or their remitters (beneficiaries);
- on cash and other valuables of the customer kept in the credit institution.

3. Confidential banking information shall be provided only to the following persons:

- to the owner of the bank account and owner of valuables or their representatives;
- to the remitters and beneficiaries of money transfers;
- to the National Bank of Tajikistan upon request;
- to the courts based on the court decision or request;
- to the Credit histories bureaus in accordance with the Law of the Republic of Tajikistan "On Credit Histories";
- to the inquiry and preliminary criminal investigation agencies under progress in respect of clients of credit institutions, if funds in a bank account, cash and valuables of customers kept in the credit institution shall be subject to seizure, confiscation or levy based on the investigator's or interrogator's resolution approved properly to the General Prosecutor of the Republic of Tajikistan, prosecutors of regions, cities and districts;
- to the tax agencies regarding tax payments by legal entities and individuals on the basis of a letter of the head of tax agency and when presenting a copy of the tax agency to carry out an inspection if it is stipulated in the Tax Code of the Republic of Tajikistan ;

4. These provisions remain in effect and in the event of terminating relationships of the customer and the credit institution on various grounds.

5. Information related to banking confidentiality shall be disclosed in the case of the customer's death to:

- persons indicated by the customer last will;
- to courts, notary offices, foreign consulates regarding heritage of property of the dead client.

6. Disclosure of the banking confidential information without complying with the provisions of the part 3 of this Article shall be prohibited, unless otherwise envisaged in this Law.

7. Persons guilty in illicit disclosure of the banking confidentiality shall be brought to responsibility as defined in the law.

8. To ensure safety of property and banking confidentiality, credit institutions shall be entitled to establish special services, as well as acquire and use weapons and necessary technical means according to the Law of the Republic of Tajikistan "On weapons".

9. Funds in bank accounts or cash and other valuables kept in credit institutions shall be seized based on the court decision, as well as the decisions of interrogation and preliminary investigation bodies approved by the prosecutor.

10. In the event of seizure of funds the credit institution shall immediately terminate transactions with the seized funds.

11. In the event of the seizure of other valuables kept in the credit institutions, the credit institution shall terminate withdrawal of money by owners.

#### **Article 49. Protecting Banking Confidentiality by the Employees of the Credit Institution and Third Parties**

1. Executives, employees and current or former representatives of a credit institution shall be prohibited to disclose information to third persons, divulge or enabling its analysis, except as provided by this Law.

2. This restriction also applies to the employees and inspectors of the National Bank of Tajikistan and persons appointed by the NBT for the inspection in accordance with the Article 52 of this Law, as well as to those, who inspects such reports and information directly or indirectly by virtue of their profession, position or occupation.

#### **Article 50. Exceptions**

Provisions of the articles 48 and 49 of this Law shall not apply in the following cases:

- performance of duties assigned to the auditor company according to this Law and the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”;
- provision of information and documents requested by the National Bank of Tajikistan in connection with its duties under this Law and the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”;
- actions taken and performance of duties imposed by this Law and legal standard acts of the NBT to prevent money laundering of funds from criminal sources and combating terrorism financing;
- issuance of a certificate or statement of the reasons to decline payment of checks based on the request of rightful holder;
- provision of information regarding the customer’s indebtedness in order to assess sustainability of collection rate, bad checks and in relation to other transactions deemed necessary by the NBT to ensure soundness of the banking system;
- disclosure by the credit institution of all or some information on customers’ transactions to prove its claims in a judicial dispute;
- information provided by the NBT to other supervisory authorities under the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”.

**Article 51. Protection of Information Provided by the Credit Institution**

1. Any information collected from a credit institution regarding its individual customer, customer transactions or other particulars pertinent to its relations with customers shall be considered confidential and may be disclosed only with the consent of the credit institution or as defined by this Law.
2. The NBT shall restrict access to such individual information to specifically authorized persons.
3. The NBT may publish, entirety or in part, information subject to disclosure provided to it by credit institutions.
4. The NBT, shall not disclose particulars of the operations of the credit institution other than as may be contained in the financial statements

approved by the Supervisory Board of the credit institution, unless there is consent of the credit institution.

## CHAPTER 9. SUPERVISION AND INSPECTION

### **Article 52. Supervision and Inspection**

1. The NBT shall supervise banks on a consolidated basis as follows:
  - review statements, records, comments, clarifications, proof and information provided by the credit institution in accordance with this Law;
  - request that credit institutions and their subsidiaries and affiliates provide and pass any additional information, statements, records, comments, clarifications and/or proof in writing;
  - request information on the financial position, sources of funds, reputation of direct and indirect shareholders of a credit institution and a person, who applied to acquire ten or more percent of the shares of the bank;
  - carry out inspection of a credit institution, subsidiaries and affiliates to be made by one or more employees, or by persons appointed for this purpose by the NBT.
2. Such inspection shall review operation of the credit institution to assess its financial standing, as well as the extent, to which the bank complies with the provisions of this Law, the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”, legal standard acts of the NBT, its own regulations and internal policies.
3. The NBT shall examine all credit institutions on a regular basis, and at least once in every year, except that representative offices shall be inspected at least once in every two years.
4. Persons assigned to carry out inspections under this Article shall be subject to confidentiality requirements. Executives, employees and representatives of the credit institution or the subsidiary and its affiliates shall ensure access of these persons to all office premises, including cash department, depository and strong rooms, books, accounts, records, including electronic records.
5. Any information, including private information of banks, requested by the inspectors shall be furnished in a timely manner by the credit

institution. Executives of the credit institution shall provide comprehensive support for the inspection.

6. The National Bank of Tajikistan shall notify the Supervisory Board of the relevant credit institution of the inspection results.

7. Procedure of inspections, summarizing and submitting results shall be defined by the legal standard acts of the National Bank of Tajikistan.

8. Tax authorities may inspect credit institutions regarding tax payment from banking activities.

9. Other government authorities may not audit activities of credit institutions. They shall interact with credit institutions pursuant to the procedure set in the Article 48 of this Law.

### **Article 53. Prompt Remedial Measures and Administrative Penalties**

The National Bank of Tajikistan may take prompt remedial measures and administrative penalties in respect to credit institutions in accordance with the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”.

## **CHAPTER 10. FINAL PROVISIONS**

### **Article 54. Dispute Settlement**

1. Credit institutions may appeal in the Supreme Economic Court of the Republic of Tajikistan against the decisions of the National Bank of Tajikistan to decline an application for a license, decisions on prompt remedial measures and administrative penalties, within 30 days following the date of receipt.

2. Lodging a complaint in the Supreme Economic Court of the Republic of Tajikistan does not result in suspension of the NBT decision.

### **Article 55. Protection of Interests of Customers**

1. Relationships of customers with the credit institution shall be based on the agreement, unless otherwise stipulated by the Law.

2. Terms and interest rates on credits, deposits, savings, as well as the service fees shall be determined by the credit institution in the contract with the customer.

3. Prior to providing services to a customer, the credit institution shall inform the customer of the requirements, including fees for services, interest rates and other expenses of the customer.

4. Credit institutions shall implement transfer and cash funds of customers to the bank account not later than at the date of the pay order receipt, unless other terms are set by the law, contract or payment documents.

5. In the event of a delay or incorrect transfer of funds to the customer account or withdrawal of funds, the credit institution must pay a penalty for each day of delay to the customer on the overdue payment based on the refinancing rate of the National Bank of Tajikistan.

6. Individuals and legal entities shall be free to choose a credit institution, may open bank accounts in one or several credit institutions.

7. A credit institution shall be obliged to provide information on the license, on the bank operation procedures, as well as the accounting balance, the profit and loss statement, and the audit opinion for the previous year.

8. A credit institution shall not have the right to unilaterally change the interest rate on credits, deposits, savings, service fees, and terms of contracts entered into with customers, unless the contract envisages otherwise.

9. A credit institution shall not have the right to set mandatory conditions to use other services of this credit institution or its offices when extending a loan or providing a service to a client.

10. Newly established credit institutions shall have the right to attract deposits and savings of individuals after one year of a break-even level and given membership in the system of guaranteeing deposits of individuals.

11. The Government of the Republic of Tajikistan shall guarantee safety and repayment of deposits and savings of individuals in a state bank.

12. Five years limitation period shall apply to claims of credit institutions on extended credits.

### **Article 56. Final Provisions**

1. A credit institution possessing a license issued by the NBT on the effectiveness date of this Law shall continue to operate as a credit institution based on the provisions of this Law.

2. Such a credit institution shall provide the NBT with a list of shareholders and for each owner of a qualifying holding, including the

ultimate beneficial owner of such a qualifying holding, the information and a certificate, and such other information on the owners as requested by the NBT within three months of the entry into force of this Law.

3. The provisions of the paragraph 2, part 1 of the Article 30 of this Law shall not apply to credit institutions through September 1, 2010 provided that they do not increase the principal amount of large credits within this period of time.

4. Regulations of the Law of Republic Tajikistan «On Joint-Stock Companies» and the Law of the Republic of Tajikistan «On Limited Liability Companies» shall apply in parts not contradicting the provisions of this Law.

5. Until the laws and other regulations of the Republic of Tajikistan are brought in compliance with this Law, they shall apply only in parts not contradicting provisions of this Law.

#### **Article 57. Responsibility for the Violation of this Law**

Individuals and legal entities shall be brought to responsibility for the violation of this Law in accordance with the order established by the legislation of the Republic of Tajikistan.

#### **Article 58. Repeal of the Law of the Republic of Tajikistan “On Banks and Banking Activities”**

The Law of the Republic of Tajikistan “On Banks and Banking Activities” from May 23, 1998 (Akhbori Majlisi Oli of the Republic of Tajikistan: 1998, No.10 page 143; 2002, No. 11, page 669; 2005, No. 12, page 647; 2007, No. 7, page 678) shall be repealed.

#### **Article 59. Entry into Force of this Law**

This Law shall enter into force after its official publication.

**Emomali Rahmonov**  
**President of the**  
**Republic of Tajikistan**

**Dushanbe, May 19, 2009**

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