

## LAW OF MONGOLIA

### ON BANKING

#### Chapter One General Provisions

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

The purpose of this law shall be the regulation of relations concerning licensing of banks, the revocation of licenses, the establishment of general principles of a bank's management, organization and activities, and taking enforcement measures to a bank. *(This Article was re-edited by Law of July 21, 1999.)*

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

1. The legislation on banking activities is comprised of the Constitution of Mongolia, the Central Bank Law (Bank of Mongolia), this law and other relevant legislation, which is consistent with them.
2. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provisions of the international treaty shall prevail.

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

1. Bank is a for profit legal entity which has the paid in capital consisted of cash funds invested by shareholders and the shareholders of which bear financial liability to the extent of their invested capital and is engaged in financial intermediary services such as accumulating as deposits cash funds of others, extending loans on its own behalf and providing current account services with the special permission of the Bank of Mongolia. *(Changes introduced by Law of February 2, 2001 are included.)*
2. In this law, the following terms shall have the following meanings:
  - 1) "related person" to a bank shall include the shareholders, chairman and members of Representative Governing Board, executive director, bank branch and sub-branch managers, their grandparents, parents, spouses, siblings, children and other legal entities the controlling share of which is owned by these individuals, and legal entities that possess the controlling share of such legal entities. *(This subparagraph was re-edited by Law of July 21, 1999.)*
  - 2) "management" means Shareholders meeting, the Representative Governing Board and/or executive director of a bank;
  - 3) *(This provision was annulled by Law of July 21, 1999.)*

- 4) "to implement the bank restructuring" means the complex of measures taken to enhance the financial capability and decrease the loss of a bank by making changes in the composition of paid-in capital and structure of a bank, or by increasing or decreasing the paid-in capital. *(This subparagraph was added by Law of July 21, 1999.)*
- 5) "assets, liabilities and capital of a bank" are the definitions determined in the accounting regulation approved by the Bank of Mongolia in accordance with international standards. *(This subparagraph was added by Law of July 21, 1999.)*

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

A bank may be: State, privately or jointly owned, depending on the ownership of its paid in capital; a joint-stock or limited liability business entity, depending on its incorporation; and a general or specialized bank, depending on the type of banking activities it performs.

#### **Article 5. Non-influence on bank activities**

1. Unless the law specifically provides to the contrary, the Bank of Mongolia and/or State administrative bodies of any level shall not interfere with the activities of a bank or illegally influence the management or decisions of a bank.
2. A bank shall not bear responsibility for obligations undertaken by the State, and the State shall not bear responsibility for obligations undertaken by a bank unless the State specifically assumes that responsibility.

## **Chapter Two Banking Activities**

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

1. Banks may, upon the authorization of the Bank of Mongolia, carry out the following activities:
  - 1) Accepting deposits;
  - 2) Disbursing loans;
  - 3) Providing transaction services;
  - 4) On behalf of itself, providing payment guaranties and pledge to third parties;  
/This subparagraph is revised by the Law of July 4, 2002/
  - 5) Purchasing, selling, depositing and placing on deposit foreign currency;
  - 6) Purchasing, selling, depositing and placing in deposit precious metals and

- stones;
- 7) Receiving valuables into custody;
  - 8) Conducting foreign exchange and transaction services;
  - 9) Issuing, buying and selling securities;
  - 10) Dealing in financial leasing transactions;
  - 11) Provide investment, financial consultancy and/or information services
  - 12) Engaging in other financial activities or services permitted by the laws and regulations and licensed by the Bank of Mongolia.
2. Non-bank financial institutions may carry out the activities stated in paragraph 1 of this Article only upon authorization of the Bank of Mongolia. The Bank of Mongolia shall set the regulation with respect to granting and revoking of license and supervision of non-bank financial institutions.  
/This paragraph is amended by the Law of November 30, 2001/
3. Paragraph 2 of this Article shall not apply to the Insurance Company, Credit and Loan Cooperative, and Security Companies. *(This paragraph was re-edited by Law of July 21, 1999.)*

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

1. No bank shall engage in any activities for profit other than the banking business. This provision shall not apply in the case of holding temporarily and selling any property taken as security for a loan for purposes of recovering the loan.
2. The shareholders, chairman and members of the Representative Governing Board, the executive director and officers of a bank shall not release to others, disclose or use any information which is considered by the bank, its customers, and/or third parties to be confidential, except in the following cases:
  - 1) with the written consent of the person about whom the confidential information relates;
  - 2) on the demand of the Bank of Mongolia; or
  - 3) on the request of governing authorities of courts, prosecutor's office and police due to their work requirements *(This subparagraph was re-edited by Law of August 20, 1998).*
  - 4) if the violation of laws of Mongolia is proven, at the request of an international legal organizations or Government of a foreign country which has concluded with Mongolia an Agreement on Legal Assistance. *(This subparagraph was added by Law of August 20, 1998)*

3. Confidentiality requirement described in paragraph 2 of this article shall be inapplicable to inter-bank information on loans disbursed by a bank.
4. In addition to the prohibitions in paragraph 1 of this article, a bank shall not:
  - 1) carry out or participate in activities aimed at providing the bank, alone or together with others, a position of dominance in the financial markets, or creating unfair advantage to itself or any third party;
  - 2) ~~engage in the market for land;~~/This subparagraph is annulled by the Law of June 7, 2002/
  - 3) make false or misleading advertisement or statement relating to its activities; or
  - 4) make donations to the political parties and coalitions. *(This subparagraph was added by Law of August 20, 1998.)*

#### **Article 7<sup>1</sup>. Banking Advertisement.**

1. Advertisement by the bank shall truly reflect its activities at a given time and shall be in conformity with the laws and legislation.
2. The Bank of Mongolia shall prohibit bank advertisement if it is considered to have following contents:
  - 1) if its financial statements and information made public contradict to the financial reality of the bank,
  - 2) do not conform to the legislation. *(This subparagraph was added by Law of August 20, 1998.)*

#### **Article 8. Cash deposits**

1. A bank may hold cash fund deposits for citizens of Mongolia or foreign countries, or stateless persons (hereinafter referred to as "individuals") or any legal entities at their request, on contractual basis and may pay interest on such deposits.
2. Any operations that relate to deposits and insurance services on deposits shall be regulated by law.

#### **Article 9. Loan**

1. A bank may provide loans to individuals or legal entities on its terms and conditions. A bank shall determine the interest rates on its loans.
2. For payment of principal loan and interests unpaid in due time, a bank may acquire, in accordance with an agreement of two parties or Court decision, the

property, shares or equity in paid-in capital and this provision shall not apply to the case provided in paragraph 4, article 16 of this law.

3. Loan disbursement activities by banks shall be regulated by law.

#### **Article 10. Transaction services**

1. Services relating to transaction services for customers shall be rendered on the basis of an agreement between the bank and the customer.
2. A bank shall make transactions from a customer's account with the consent of the customer and within the limits of remaining balance. Transactions made pursuant to outstanding Court decisions, by the decision of a receiver or pursuant to a contact or payment order which has been signed by the customer and by which the customer has agreed to pay the debt without any dispute shall be regarded as transactions made with the consent of the customer.
3. Banks shall determine their own fees for transaction services.
4. Inter-bank settlements by banks shall be conducted through their accounts at the Bank of Mongolia.
5. Activities relating to transaction services shall be regulated by law.

#### **Article 11. Payment guarantees**

A bank may provide guarantees to third parties on contractual basis and within the limits set out in subsections 1 to 3, Article 16 of this Law.

#### **Article 12. Custody of valuables**

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

#### **Article 13. Foreign exchange transaction services**

Banking activities relating to foreign payments and buying or selling foreign currencies and other financial instruments denoted by such currencies shall be regulated by the law.

#### **Article 14. Issuing, accepting as collateral, purchasing and selling of securities**

1. Banking activities relating to issuing, selling or purchasing of securities to be traded in the security market shall be undertaken within the limit described in article 16 paragraph 4 of this law and shall be regulated by the relevant law.

2. With the authorization of the Bank of Mongolia, a bank may issue, buy, sell or accept as collateral securities valid for up to one year and to be traded on the money market.

### **Article 15. Requirements for banking activities**

1. A bank shall comply with the following requirements:
  - 1) to maintain its compulsory reserves and liquid reserves in the forms and amounts required pursuant to the regulations issued by the Bank of Mongolia and to safeguard customers' deposits of money and to disburse and transfer funds on the first demand by a customer;
  - 2) to comply with requirements on **capital adequacy**, loan loss provisioning, foreign currency and other prudential ratio criteria according to regulation set by the Bank of Mongolia;
  - 3) not to restrict customers from using the services of several banks;
  - 4) not to make transactions from a customer's account without the consent of the customer. This provision shall not apply to withdrawal of tax debt, through undisputable procedures, from a cash fund deposited in a bank account by a taxpayer who has not settled in due time his/her tax debt (*This provision was added by Law of May 2, 2002*);
  - 5) not to require customer to use services of its branches or representative offices as a pre-condition for providing services of the particular bank.
2. A bank shall provide its customers with true and correct information relating to its activities in accordance with the reporting principles and standards set by the Bank of Mongolia.

### **Article 16. Restrictions on banking activities**

1. The total value of loans, loan equivalent assets and guarantees provided to one person or group of related persons shall not exceed 20 percent of the capital of the bank.
2. The total value of guarantees provided shall not exceed the total amount of the capital of the bank.
3. The maximum value of loans, loan equivalent assets and guarantees provided to a shareholder, the chairman, a member of the Representative Governing Board, an executive director or a bank officer or any related person thereof shall not exceed 5 percent of the capital of the bank, and their total amount shall not exceed 20 percent of the capital of the bank respectively. The provision of loans or guarantees to the above mentioned persons shall meet the following requirements:

- 1) loans are not to be made available to such persons on terms and conditions or at interest rates which are more favorable than those generally applicable;
- 2) loan shall not be disbursed when the contribution to the paid-in capital used as collateral;
- 3) an individual shall not be permitted to take part in management activities of the bank in any form, if a loan made by the bank to that person remains unpaid for more than six months or the total sum of loan, loan equivalent assets and guarantee provided to a given person exceeded the 5 percent stated in paragraph 3 of the present Article. *(This subparagraph was added by Law of August 20, 1998)*
4. The total amount of securities that may be purchased by a bank shall not exceed 20 percent of the capital of the bank or 10 percent of the total amount of the shares issued by one company. This shall not apply to any securities issued by the Government and the Central Bank. *(Changes introduced by Law of February 2, 2001 are included.)*

## **Chapter Three**

### **Incorporation of Bank**

#### **Article 17. Incorporation of bank**

1. Legal entities or individuals, with the exception of those financed by the State budget, religious or non government organizations and charity funds, shall be entitled to incorporate a bank.
2. Only the Bank of Mongolia shall grant license to incorporate bank.
3. Approval is required from the Bank of Mongolia for the establishment in a foreign country of a bank or a branch or representative office of a bank.  
*/This paragraph is amended by the Law of November 30, 2001/*

#### **Article 18. Documents to be compiled**

1. The founders of a bank shall compile following documents:
  - 1) an application requesting a license to incorporate a bank;
  - 2) founding agreement;
  - 3) the charter of the bank;
  - 4) an economic feasibility study;

- 5) the name and address of the founders and persons who will own 10 percent or more of the paid-in capital of the bank and audited financial statements of such business entities for the past two years;
  - 6) a detailed description of the management, staff, technical facilities and premises of the proposed bank in the form prescribed by the Bank of Mongolia.
2. The Bank of Mongolia may request an applicant to submit additional information within the framework of the required documents, if it considers the documents submitted pursuant to paragraph 1 of this article are incomplete or unclear. In case of necessity the Bank of Mongolia may apply to the Court or law enforcement agencies to provide information or materials regarding the founders, shareholders, or proposed management of the bank.

#### **Article 19. Additional requirements for licensing of a bank, branch or representative office of a bank with foreign investment**

For purposes of obtaining license for incorporation of bank, or branches or representative offices of bank with foreign investment, following documents shall be compiled and submitted to the Bank of Mongolia in addition to the documents described in article 18:

- 1) the decision of the foreign bank or financial institution to incorporate a bank or a branch or representative office of a bank on the territory of Mongolia;
- 2) evidence of the registration of the foreign bank or financial institution in the respective country and its audited financial statements for the past 3 years; and
- 3) other documents required by other laws and legislation.

#### **Article 20. Granting license**

1. When reviewing an application for a license to incorporate a bank and other documents, the Bank of Mongolia shall determine whether the following requirements are satisfied:
  - 1) whether the bank has capital consisted of paid-in capital sufficient to carry out stable and effective banking activities;
  - 2) whether Executive Director, members of the Representative Governing Board and other managers have sufficient knowledge, education and experience to conduct fair and profitable operations of a bank, and whether Executive Director and members of the Representative Governing Board of the bank satisfy the criteria established in subsections 6 and 8, Article 25.



- 3) Whether the establishment of the bank will have an adverse effect on the national economic security.
2. The Bank of Mongolia shall accept applications for a license, after verifying that the documents specified in articles 18 and 19 of this Law have been compiled completely. If additional information is required, the date on which the additional documents are submitted shall be deemed to be the date of receipt of the application for a license.
3. The bank of Mongolia shall issue its decision on granting a license within 60 days from the date of receipt of an application requesting a license and shall inform the founders of its decision in writing.
4. If a bank normally carried out its licensed activities after obtaining the license, the Bank of Mongolia, according to relevant procedures, may grant licenses to conduct other banking activities set forth in Article 6. *(This paragraph was re-edited by Law of July 21, 1999)*
5. ~~The Bank of Mongolia shall set a regulation on granting the license for establishing a bank or its banking unit. *(This paragraph was added by Law of July 21, 1999)*. /This subparagraph is annulled by the Law of November 30, 2001/~~

#### **Article 21. Refusal to grant a licence**

1. The Bank of Mongolia shall refuse to grant a banking license in the following circumstances:
  - 1) the requirements set forth in articles 17, 18, 19 and 20 of this Law were not satisfied;
  - 2) the charter of a bank is in contradiction with the law;
  - 3) it is established that a bank that is to be incorporated is not able to have the paid-in capital sufficient to comply with the requirements, or the materials submitted were false, or the paid-in capital was provided from a banking loan, or persons to work in the management of the bank do not satisfy the criteria set by this Law.

#### **Article 22. Registration of banks**

1. All banks licensed by the Bank of Mongolia shall be registered in the State Registration pursuant to articles 17, 18, 19 and 20 of this law.
2. Bank of Mongolia approval shall be obtained in order to establish a unit of a bank. This shall not be registered specifically, but notices shall be made in the license issued to the head bank.
3. Registration of a bank in the State Registry shall be publicly noticed.

### **Article 23. Name of bank**

1. The name of a bank shall consist of its own name and the word "bank".
2. It is prohibited for the non banking institutions to use the name "bank".
3. The name and the location of a bank shall only be changed with the consent of the Bank of Mongolia.
4. Unit of a bank shall use the name of the head bank.

### **Article 24. Grounds for revocation of licenses**

1. The Bank of Mongolia shall revoke the license of a bank on the following grounds and shall give public notice:
  - 1) upon a declaration of bankruptcy or liquidation in respect of the bank by a competent organization /Court, the Bank of Mongolia, the meeting of shareholders. *(This subparagraph was added by Law of August 20, 1998);*
  - 2) if it is shown during the first year of registration of a bank that the license has been obtained through compiling false documents;
  - 3) *(This subparagraph was annulled by Law of July 21, 1999)*
  - 4) if the bank has not commenced banking operations within one year of receipt of its license;
  - 5) *(This subparagraph was annulled by Law of July 21, 1999)*
2. By revoking the license to incorporate a bank, all licenses which were previously granted to the bank shall become invalid.
3. If a license has been revoked or has been refused to be granted, the Bank of Mongolia shall not accept materials on a new application for a license within one year.
4. If the Bank of Mongolia has revoked a banking license due to reasons other than stated in sub-paragraph 8, paragraph 1, Article 31 of this law, or in paragraph 1 of this Article, the Representative Governing Board of that bank shall, within 30 days after and on the basis of such resolution of the Bank of Mongolia, call the general meeting of shareholders and shall issue a decision on liquidation of the bank. Liquidation shall be executed in accordance with Article 31 of the Civil Code and Article 45 of this Law and claims to this bank shall be settled. *(This paragraph was re-edited by Law of July 21, 1999)*

## **Chapter Four**

## **Bank Management, Structure and Organization**

### **Article 25. Bank management**

1. A general meeting of shareholders shall be the supreme authority of a bank. For the banks with one owner, the supreme authority of the general meeting of shareholders goes to the owner, for the state owned bank it goes to the Government or its authorized entity. *(This paragraph was re-edited by Law of July 21, 1999.)*
2. The following matters shall be subject to decision at a general meeting of shareholders:
  - 1) approval of the charter of the bank, alteration of an amendment to the charter of the bank;
  - 2) changes in the structure and size of the capital of the bank;
  - 3) reorganization and dissolution of the bank;
  - 4) consideration and approval of the financial reports and balance sheets prepared by an auditor',
  - 5) election and removal of the chairman and members of the Representative Governing Board, determination of their power and responsibilities and their salary or remuneration, approval of the annual budget and discussion of the financial reports;
  - 6) issues with respect to bank auditor(s) /Board of Auditors/ shall be regulated according to Article 92 of the Company Law. *(Changes introduced by Law of February 2, 2001 are included.)*
3. The Representative Governing Board of the bank shall have the following powers:
  - 1) to approve the bank's targets and a business plan for future years;
  - 2) to determine the bank's management and organizational structure and administrative expenses;
  - 3) *(This subparagraph was annulled by Law of July 21, 2001.);*
  - 4) to appoint, suspend, release and supervise the activities of the Executive Director of a bank on the basis of agreement with the Governor of the Bank of Mongolia *(This subparagraph was re-edited by Law of August 20, 1998.);*
  - 5) to define the powers and responsibilities of the executive director in relation to disposal of the bank's assets;

- 6) to call a general meeting of shareholders and to make recommendations at the general meeting of shareholders on the matters referred to in paragraph 2 of this article.
  - 7) to establish or restructure an internal auditing department (*This subparagraph was added by Law of July 21, 1999.*)
4. The procedures of the Representative Governing Board shall be governed by the charter of the bank.
  5. Matters relating to the procedures of general meetings of shareholders and meetings of the board of directors shall be governed by articles 25<sup>1</sup> of this Law and 43, 44, 45 and 47 of the Partnership and Company Law of Mongolia. (*This subparagraph was re-edited by Law of August 20, 1998.*)
  6. The chairman and members of the Representative Governing Board shall meet the following criteria:
    - 1) do not have any debts under a Loan or Guarantee agreement, which have exceeded the payment date,
    - 2) be a shareholder of the bank
    - 3) does not have any criminal record
    - 4) their ethical and business reputation will not affect the management of a bank. (*This subparagraph was re-edited by Law of August 20, 1998.*)
  7. The executive director of a bank shall have the following duties and responsibilities:
    - 1) to place the interests of the bank and its customers above his/her own personal interests and take care to commit all his/her professional efforts and experience;
    - 2) to keep confidential and not to use for personal or third party gain any information on customers of the bank that he or she knew in the course of his/her service to the bank;
    - 3) to make written disclosure to the board of any conflict of interest as soon as a conflict of interest becomes apparent. In particular a conflict of interest shall exist whenever the executive director or any related person has a financial interest in an entity wishing to transact business with the bank;
    - 4) not to attend any meeting discussing and considering his/her conflict of interests or decisions or opinions concerned;
    - 5) Executive Director shall manage bank's day-to-day operations within his/her powers established by law and regulations and the Charter of the bank. (*This subparagraph was added by Law of August 20, 1998.*)

8. Executive Director of a bank shall satisfy the following criteria:
  - 1) to have not less than 3 years working experience in the banking, financial sector and to have management skills and experience in this field.
  - 2) does not have a debt under a Loan or Guarantee contract which exceeded the payment term. */This subparagraph is revised by the Law of July 4, 2002/*
  - 3) does not have any criminal record. *(This subparagraph was added by Law of August 20, 1998.)*
9. If an Executive Director of a bank does not satisfy the criteria set in paragraph 8 of the present Article or has committed an unfair act, or does not have the required professional skills and his service is not satisfactory, the Governor of the Bank of Mongolia may suspend or release the Executive Director of a bank from his/her duties.

**Article 25<sup>1</sup>. Procedure for convening meetings of bank shareholders and Representative Governing Board of a bank at the initiative of the Bank of Mongolia.**

1. If enforcement measures are undertaken under the Banking legislation the Bank of Mongolia or Conservator or Receiver appointed by the Bank of Mongolia shall initiate meetings of shareholders and of Representative Governing Board. Meetings of shareholders may be regular or irregular.
2. If it is considered necessary for implementation of conservatorship or receivership enforcement measures the Bank of Mongolia, Conservator or Receiver may announce and convene an irregular meeting of shareholders.
3. The Agenda of a shareholder meeting of a bank shall be announced 30 days before of the meeting day, in case of implementation of conservatorship or receivership a meeting may be convened prior to the date provided above.
4. The Resolutions of a meeting shall come into force at the proposal of Receiver and Conservator.

**Article 26. Charter of a bank**

1. The charter must state the following:
  - 1) the name, location and address of the bank;
  - 2) the type of banking business to be provided;
  - 3) the amount of the capital;
  - 4) the structure of the management and organization;

- 5) procedures for meetings of shareholders and for the activities of the Representative Governing Board;
  - 6) the procedure for internal auditing (*This subparagraph was re-edited by Law of July 21, 1999.*);
  - 7) procedures for the protection of the reputation of the bank and its officers and the security and social insurance of the bank's staff.
2. Any alteration or amendment to the charter of a bank shall be registered with the Bank of Mongolia.
  3. The internal auditing department shall supervise the implementation of the policy approved by an administration of a bank, the annual business plan, the budget, procedure of activities, and the correctness of the record of the accounting standards and financial statements; and shall be accountable to the Representative Governing Board and the Executive Director of the bank on protecting a bank assets and improving its efficiency. (*This paragraph was added by Law of July 21, 1999.*)

#### **Article 27. Banking capital**

1. A Bank shall have its own capital. It shall determine its capital in accordance with the accounting regulation approved by the Bank of Mongolia.
2. The paid-in capital of a bank shall consist of bank Shareholder's cash contributions and its minimum amount shall be one billion togrogs.

The Bank of Mongolia may increase the minimum paid-in capital amount taking into consideration the economic situation of the country, inflation of the currency, the solvency of a given bank and specific types of its operations. (*This subparagraph was re-edited by Law of August 20, 1998.*)

3. Foreign investors may make investments in the banking sector using profits gained from investments made in the non-banking sector.
4. (*This paragraph was annulled by Law of July 21, 1999.*)
5. A bank shall distribute dividends only if after the distribution it will continue to meet prudential ratios set by the Bank of Mongolia. (*This paragraph was re-edited by Law of August 20, 1998.*)
6. A bank shall determine the amounts of any decrease or increase in its capital in accordance with profits earned or losses accrued from banking activities and fluctuations in the amount of its compulsory reserve fund.
7. The Bank of Mongolia together with the Ministry of Finance shall issue procedures for the establishment of, and allocation of funds from, a reserve fund to cover losses that may accrue from defaults on loan repayments.

The bank of Mongolia shall set a procedure for the establishment of, and allocation of other reserve funds.

8. A bank shall establish its own procedures for establishment of funds, with the exception of the procedure referred to paragraph 7 of this article.
9. Shareholders shall be prohibited from withdrawing their investment contributed to the paid in capital, except by way of sale, inheritance, gift or making a will which shall be subject to approval by the Bank of Mongolia.

The Bank of Mongolia may refuse to grant its approval if it is proved by Court order that the contracts on sale or inheritance of the investment contributed to the paid in capital violate conditions and requirements set forth in laws and legislation. *(Changes introduced by Law of February 2, 2001 are included.)*

The Bank of Mongolia shall have the right to refuse to grant its approval if the change that would result from sale of shares to the structure of the shareholding violates banking law and legislation.

This provision shall not apply in any circumstances where paid-in capital or part of paid-in capital of a bank is written off to implement the enforcement measures taken in circumstances of appointing a receiver by the Bank of Mongolia or to recover losses which arose as a result of criminal activities.

10. The shareholders of the bank shall undertake financial liability and cover the loss to the amount of their contribution to the capital of the bank. *(This paragraph was re-edited by Law of August 20, 1998.)*
11. Any change in a bank's paid-in capital or a bank's membership, shall be subject to Bank of Mongolia prior approval.

The Bank of Mongolia shall issue regulation on increasing, decreasing of the paid-in capital, issuance of new shares, sale, and transfer of shares. *(This subparagraph was added by Law of August 20, 1998.)*

#### **Article 28. Financial statements.**

1. Financial statements of a bank shall consist of balance sheet, the profit and loss statement, cash flow statement, interpretations and clarifications.
2. A bank's financial statement shall meet the following requirements:
  - 1) financial statement presentation shall conform to the accounting standards set by the Bank of Mongolia in accordance with the international standards,
  - 2) a document with dates officially certifying that the financial statements are made truly and in accordance to the subparagraph I of this paragraph and stamped and signed by Chairman of the Representative Governing Board, Executive Director and Chief Accountant.

3. A Bank shall issue its financial statement each month and submit it to the Bank of Mongolia. The Bank of Mongolia reserves a right to request any additional certifying documents related to the financial statement of the bank.

#### **Article 28<sup>1</sup>. Disclosure of financial statements of a bank.**

1. A bank shall disclose to the public through the media, a financial statement that meets the requirements of Article 28 of this law each month, and an audited financial report of the previous financial year in the first quarter of the next year.
2. In addition to the reports provided for in paragraph 1 of this article the Bank of Mongolia may require from all banks or a given bank to disclose to the public all or part of the following information:
  - 1) The work report certified by signatures of members of Representative Governing Board and Executive Director
  - 2) on bank's members, Representative Governing Board, Executive Director, Deputy Director, Chief accountant, managers of departments and divisions, and supervision councils
  - 3) status of legal person, structure of ownership and its membership,'
  - 4) finance and accounting systems and internal audit,
  - 5) other information which is considered necessary by the Bank of Mongolia to define the bank's risk"
3. The Bank of Mongolia shall require from a bank to correct the financial statements or information disclosed to the public if it was not made in accordance with the relevant regulations, or was incorrect or false, or has mistakes. *(This paragraph was added by Law of August 20, 1998.)*

#### **Article 28<sup>2</sup>. Auditing financial statements**

1. A bank shall have audited the financial statements, other required documents and information by an auditing institution /auditor/ licensed by the Bank of Mongolia not less than once a year. */This paragraph is amended by the Law of November 30, 2001/*
2. ~~The Bank of Mongolia shall adopt a regulation on licensing an auditor of a bank's financial statements and documents. /This paragraph is annulled by the Law of November 30, 2001/~~
3. The auditing institution /auditor/ shall submit its conclusions on auditing the financial statements and documents to the Representative Governing Board and Board of Auditors. *(This paragraph was added by Law of August 20, 1998.)*



### **Article 28<sup>3</sup>. Submission of auditor's conclusions to the Bank of Mongolia**

1. An auditing institution /auditor/ shall submit the original copy of its final conclusions to the audited bank and the Bank of Mongolia.
2. An auditing institution /auditor/ shall immediately inform the Bank of Mongolia of its conclusions when the following conclusions are made on the basis of documents provided by a bank.
  - 1) if a bank going to experience an exceptionally difficult financial situation in near future due to insolvency or possible insolvency,
  - 2) if considers that staff of a bank engaged in unfair, illegal operations, which have a negative affect on the financial situation of a bank. *(This subparagraph was added by Law of August 20, 1998.)*

### **Article 28<sup>4</sup>. Revocation of auditing license /This Article is annulled by the Law of November 30, 2001/**

- ~~1. The Bank of Mongolia shall revoke the auditing license and make void the auditing conclusions on the following grounds:
  - ~~1) the auditing institution wrongly audited the financial statements of a bank or caused damage to the bank due to a violation of auditing principles, and providing an unsatisfactory service~~
  - ~~2) it was proved that the confidential information of a bank, collected in the process of the auditing, was disclosed and released to others,~~
  - ~~3) the audited report and materials related to its conclusions were deliberately not submitted or submitted partially to the Bank of Mongolia,~~
  - ~~4) deliberately issued false conclusions,~~
  - ~~5) an auditor ceased to work in his/her capacity in auditing institution although the auditor is licensed by the Bank of Mongolia,~~
  - ~~6) has violated the banking and auditing legislation~~~~

### **Article 29. Taxation**

1. A bank shall pay tax in accordance with the relevant laws of Mongolia.
2. *(This paragraph was annulled by Law of January 15, 1998.)*

### **Article 30. General conditions relating to decisions made by a shareholder's meeting on restructuring and/or liquidation of a bank**

1. Any decision to liquidate or restructure a bank must be made by a meeting of the shareholders and must have the consent of the Bank of Mongolia.
2. The following documents shall be submitted to the Bank of Mongolia in order to liquidate or restructure the bank:
  - 1) the decision of the shareholders at a general meeting to restructure or liquidate the bank;
  - 2) documents setting out the need for, the type, conditions, and period for the restructuring or liquidation. These documents shall also include the measures to be taken after the restructuring or liquidation, the period for completing those measures, the relevant financial statements prepared by an auditor and discussed by the shareholders at the general meeting and any other information required;
  - 3) the expected financial results and balance sheets projected for after the restructuring of the bank.
3. The Bank of Mongolia shall consider and decide on the application within 30 days of receiving the application and relevant documents, and announce the decision to the public. The date of receiving the application shall be determined in the manner provided for in article 20 paragraph 2 of this law.
4. The Bank of Mongolia may decline an application made pursuant to a decision made at a meeting of shareholders if the liquidation or restructuring of the bank would be inconsistent with legislation or would negatively affect the bank's customers.
5. The liquidation shall not commence prior to the decision of the Bank of Mongolia and shall be conducted in accordance with legislation.

## Chapter Five

### Penalties and Other Enforcement Measures Against a Bank

#### Article 31. Enforcement measures against banks which breach the law

1. The Bank of Mongolia may take the following measures of compulsion or impose the following penalties if a bank breaches this law or decisions made by the Bank of Mongolia on matters within its powers:
  - 1) issue written warnings;
  - 2) pass an order requiring remedial action to be taken by a fixed date;
  - 3) limit or stop activities of the bank;
  - 4) impose administrative punishments specified in Article 49 of this Law;
  - 5) suspend temporarily or dismiss the executive director from office and stop his/her receipt from the bank of any remuneration or benefits;
  - 6) to appoint a controller responsible for controlling the activities of a bank, and reporting it to the Bank of Mongolia. *(This subparagraph was added by Law of July 21, 1999.)*
  - 7) impose a conservatorship;
  - 8) appoint a receiver;
  - 9) revoke the license of the bank.
2. The Bank of Mongolia shall establish the procedures for enforcement of the measures of compulsion set forth in subsection 1 of this Article. *(Changes introduced by Law of February 2, 2001 are added.)*

#### Article 32. General principles in relation to enforcement measures

1. When imposing penalties and taking enforcement measures pursuant to Article 31 of this law, the Bank of Mongolia shall exercise its sole discretion based on the particular circumstances of each case and shall apply the principle of equality so as to treat events with similar circumstances in the same way by imposing similar penalties or taking like enforcement measures.
2. A party may appeal to the Court if it considers that a penalty imposed or enforcement measure taken by the Bank of Mongolia is not justified.
3. The measures and penalties provided for shall not preclude the application of other penalties imposed on bank as provided in other laws.

## **Chapter Six**

### **Imposition of Conservatorship on Banks**

#### **Article 33. Imposition of conservatorship on banks**

1. A conservatorship means the carrying out of administrative, organizational, financial and other measures as a package to improve the soundness of the financial condition of a bank or to improve its operations on the grounds of a determination by the Bank of Mongolia that the bank is likely to become insolvent or because of its failure after 3 months to fulfill the requirement of article 15 paragraph 1, subparagraphs 1 and 2, of this law.
2. The Bank of Mongolia shall appoint its plenipotentiary representative or a board of representatives (hereinafter referred to as "representative") to the bank in conservatorship to manage it for a period of up to one year. Procedures for the activities of the plenipotentiary representative shall be issued by the Bank of Mongolia and be consistent with this law.
3. The bank in conservatorship shall pay all expenses arising during the conservatorship.
4. Shareholders of the bank have the right to apply to the Court in respect of the Bank of Mongolia's decision to impose a conservatorship on the bank within 10 days of such decision. Such an application to the Court shall not be a basis upon which the conservatorship may be deferred.

#### **Article 34. Decision on conservatorship of banks**

1. The following items shall be included in the notice of the decision of the Bank of Mongolia to impose a conservatorship on a bank:
  - 1) the name, location and address of the bank;
  - 2) the grounds for imposition of the conservatorship;
  - 3) the date of commencement of the conservatorship and its duration;
  - 4) a list of restrictions imposed on the bank;
  - 5) the full names of the representative.
2. The decision of the Bank of Mongolia to impose a conservatorship shall be made public.

#### **Article 35. Appointment of plenipotentiary representatives**

1. The Bank of Mongolia may appoint the plenipotentiary representative from its own staff or he/she may be some other person.

2. The amount of remuneration of the conservator shall be determined by the Bank of Mongolia and shall be paid by the bank in conservatorship. *(This paragraph was re-edited by Law of July 21, 1999.)*
3. The plenipotentiary representative shall conduct his/her activities in compliance with the law and any procedures and/or guidelines issued by the Bank of Mongolia pursuant to this law.
4. The Bank of Mongolia has the right to remove a plenipotentiary representative at any time.
5. A plenipotentiary representative shall be liable to the bank for any losses arising from his/her wrongful act. The plenipotentiary representative shall not be liable for losses related to routine banking risks.

**Article 36. Measures to be taken during conservatorship and powers of the representative**

1. During the period of conservatorship the following measures shall be taken by the Bank of Mongolia:
  - 1) suspension of the rights of shareholders;
  - 2) suspension of the powers of the Representative Governing Board, executive director and management of branches and subsidiaries of the bank;
  - 3) transfer for certain period of time of all rights in respect of the management of the bank to a plenipotentiary representative.
  - 4) take measures for controlling and adjusting the accounting and banking financial statement. *(This subparagraph was added by Law of July 21, 1999.)*
2. A plenipotentiary representative shall have the following rights and obligations:
  - 1) to make independent decisions with respect to the activities of the bank;
  - 2) to partially or completely suspend fulfillment of obligations in respect of deposits and borrowed funds during the period of conservatorship, if it considers it necessary;
  - 3) to amend or revoke loan, deposit or other agreements concluded between the bank and its customers which he/she considers contain provisions that are not standard and which have had an adverse effect on the interests of the bank;
  - 4) to sign agreements and documents on behalf of the bank;

- 5) to initiate legal proceedings on behalf of the bank;
  - 6) to terminate or amend contracts of employment and to employ any necessary employees for a certain period of time.
  - 7) to revise the bank's capital structure and its quantity to ensure the bank's capital adequacy ratio. *(This subparagraph was added by Law of August 20, 1998.)*
  - 8) bank restructuring *(This subparagraph was added by Law of July 21, 1999.)*
3. The bank and its branches and subsidiaries shall implement the decisions of the plenipotentiary representative. The Bank of Mongolia shall be responsible for the decisions of its representative.
  4. The executive director of a bank in conservatorship shall make the activity report and income statement available to the plenipotentiary representative.
  5. All transactions which are made on behalf of the bank but without the permission of the plenipotentiary representative shall be considered invalid.
  6. If the bank's financial condition improves or if its operations are strengthened during the conservatorship, the Bank of Mongolia shall nullify the conservatorship and revoke all or some of the restrictions imposed on the bank's activities. All amendments which were made to the charter of the bank during the conservatorship shall remain in force.
  7. The supreme authority to manage bank shall be transferred to the shareholders of the bank, established as a result of the implementation of the bank restructuring plan. *(This subparagraph was added by Law of July 21, 1999.)*

**Article 36<sup>1</sup>. The implementation of the restructuring plan of the bank during the conservatorship.**

1. The Bank of Mongolia shall approve the restructuring plan of a bank taking into consideration a proposal of the conservator.
2. The conservator shall implement the restructuring plan of a bank as follows:
  - 1) Sell assets to the other parties;
  - 2) Bring paid-in capital of the bank to the level of meeting the capital deficit.
  - 3) Sell the bank and its units
  - 4) The restructuring of the bank and other necessary operation  
*(This paragraph was added by Law of July 21, 1999.)*

## Chapter Seven

### Receivership of Banks

#### Article 37. Receivership of banks

Receivership means the procedures to be applied in relation to restructuring or the compulsory liquidation of a bank and under which a receiver is appointed to whom the powers of the administrators and management regarding the assets of the bank shall be transferred to Receiver.

#### Article 38. Receivership of a bank and recognition of its insolvency

1. The Bank of Mongolia shall enforce receivership if the following circumstances exist:
  - 1) The Bank of Mongolia considers that an imposition of conservatorship on the bank has not resulted in bringing its activities to a normal state.
  - 2) A bank becomes insolvent.
2. The Bank of Mongolia shall consider a bank insolvent if anyone or more of the following circumstances exist:
  - 1) A bank fails to repay its depositors and clients at their first demand;
  - 2) Liabilities of a bank exceed its assets and the bank is unable to meet its obligations; or loss exceeds its paid-in capital and other equity funds and the bank has lost its equity capital.
3. The Bank of Mongolia shall appoint a receiver for a bank on the grounds stated in paragraph 1 of this Article, and shall make a decision on its reconstruction or liquidation. *(This paragraph was re-edited by Law of July 21, 1999.)*

#### Article 38<sup>1</sup>. Implementation of the receivership of a bank.

1. Receivership of a bank shall be implemented as follows:
  - 1) performance of the restructuring of the bank;
  - 2) compulsory liquidation of the bank as a legal entity, and administer its assets in accordance with Article 46.
2. In case where restructuring of a bank is considered to result in more repayments of claims on the bank compared to the liquidation of a bank, the Bank of Mongolia shall issue a resolution on restructuring of a bank and shall approve a restructuring plan.

3. In the case where restructuring of a bank is not considered viable, or the implementation of the restructuring plan was not successful after 6 months when a resolution stated in the paragraph 2 of this Article was approved, then the Bank of Mongolia shall issue a resolution to enforce liquidation of the bank.  
*(This paragraph was added by Law of July 21, 1999.)*

#### **Article 39. Appointment of receiver**

1. The Bank of Mongolia shall appoint a receiver from its own staff or may appoint a person who complies with the following requirements:
  - 1) in the case of an individual, has the requisite professional knowledge, experience and personal integrity;
  - 2) has not been convicted of a crime;
  - 3) has not defaulted on any obligations to pay loans to the bank;
  - 4) does not have any relationship directly or via any related persons with the shareholders, chairman, members of Representative Governing Board, executive director or other officers of the bank;
  - 5) shall, in the case of a corporate entity, have sufficient property and resources.
2. The receiver shall be accountable to the Bank of Mongolia and shall be subject to dismissal by the Bank of Mongolia for failure to perform the functions of a receiver.
3. The remuneration of the receiver shall be set by the Bank of Mongolia and shall be paid by the bank being placed in receivership.
4. The receiver shall comply with all regulations, orders, and rules issued by the Bank of Mongolia.

#### **Article 40. Immediate effects of receivership**

1. Upon the appointment of a receiver:
  - 1) all powers of the bank and its management to dispose of bank assets shall be vested in the receiver;
  - 2) any period of time on the expiration of which a claim or right of the bank would expire or be extinguished, shall automatically be extended by a period of six months from the date of such appointment.
2. During the receivership no payment shall be made to court decision approved previously from income earned from sale of the goods except as collateral and assets of the bank.



3. Every payment or transfer of an asset or propel of the bank that was made within a period of three months before the receiver takes possession of the bank (or within a period of twelve months before the receiver takes possession of the bank if the payment or transfer was made to a shareholder, the chairman, a member of the Representative Governing Board, the executive director, an officer of the bunk or any other related persons) shall be void if it has the intent or effect of bestowing a preference on the recipient over other creditors provided however, that this provision shall not apply to:
  - 1) the payment of deposits in an amount per depositor not exceeding a limit established by the Bank of Mongolia;
  - 2) the transfer of an asset or property of the bank that is equal to the fair market value of the asset or property transferred;
  - 3) the payment of ordinary remuneration and benefits (not to include bonuses or special payments) to administrators or employees of the bank.

#### **Article 41. Legal action against appointment of a receiver**

1. Any of the following parties may appeal the decision to appoint a receiver by filing proceedings with a Court within a period of 30 days of the date on which the receiver was appointed if it considers that there are no grounds for such appointment:
  - 1) shareholders of the bunk holding not less than 25 percent of paid-in bank shares;
  - 2) persons holding not less than 25 percent of the all deposits with the bank;
  - 3) creditors holding not less than 25 percent of the claims of creditors.
2. The appeal of a decision to appoint a receiver pursuant to paragraph 1 of this article shall not be a reason to postpone or discontinue actions by the receiver.
3. The Court shall decide the appeal according to the law.

#### **Article 42. Immediate actions by receiver to announce receivership**

1. A receiver appointed under this law shall, within 24 hours of such appointment, post in each office of the bank a notice announcing that the bank has been placed in receivership. Customers shall also be given such notice.
2. The receiver shall make a similar notice available to the public and shall transmit copies of such notices to the Bank of Mongolia.

#### **Article 43. Powers and duties of receiver**

A receiver shall have the following powers:

- 1) to continue or discontinue certain operations of the bank;
- 2) to stop or limit the payment of obligations of the bank;
- 3) to re-set the rates of interest on deposits, provided that the revised rates shall not be less than the minimum interest rates at that time;
- 4) to cancel agreements to invest and to make, changes to the interest rates on loans and service fees and their duration;
- 5) to terminate any contracts of employment and other contracts concluded by the bank and to hire required employees;
- 6) to make public information which is considered necessary;
- 7) to conclude agreements on behalf of the bank;
- 8) to initiate legal actions on behalf of the bank and to represent the bank at Court sessions;
- 9) to assess and sell property kept as security for a loan;
- 10) to make any payment on behalf of the bank, within the limits established by the Bank of Mongolia.

**Article 44. Immediate actions to be taken by the receiver**

1. The receiver of a bank shall immediately, after taking over all the rights and the property of the bank, take the following actions:
  - 1) As stated in a paragraph 10 of the Article 27, to allocate the loss among the shareholders and/or holders of a certain interest of the bank and write off their paid-in capital of the bank within the limit of the total amount of their individual contribution(s) to the paid-in capital of the Bank or other funds and to reflect these changes in the financial statements.
  - 2) To prepare a list and records of all assets of the bank; to take the assets under supervision;
  - 3) Procure the return of assets and property of the bank held by others;
  - 4) Return valuables kept under deposit contracts to their owners;
  - 5) To develop a proposal and/or a plan of restructuring or liquidating of a bank within 3 months and to submit it to the Bank of Mongolia.
2. In case a resolution to liquidate a bank is issued:

- 1) To set the list of assets for sale and their sale prices and to inform related persons;
- 2) To determine a period with a deadline to receive claims of creditors of the bank and to announce it publicly;
- 3) To determine form, amount, schedule, and order of repayment of claims of the creditors and to inform the creditors about it within 2 months after receiving their claims. *(This subparagraph was re-edited by Law of July 21, 1999.)*

**Article 45. Priorities in payment of claims /This Article is annulled by the Law of July 21, 1999/**

- ~~1. The receiver of the bank shall follow the order of priority listed below when settling claims from the income received from sale of the assets of the bank:
 
  - ~~1) completion of Court ordered payments to be made by the bank to others for damage caused to their life or health;~~
  - ~~2) expenses incurred by the receiver's operation;~~
  - ~~3) credits extended to the bank after the appointment of a receiver;~~
  - ~~4) deposits and account payments and interest payable to citizens;~~
  - ~~5) deposits and account payments and interest payable to legal persons;~~
  - ~~6) repayment of loans extended by others;~~
  - ~~7) other claims against the bank.~~~~
- ~~2. If the amount earned from the sale of the bank's assets is insufficient to cover the claims the applicable principle shall be that each class of claim shall be paid in full in accordance with its order of priority.~~
- ~~3. If the amount available for payment for any class of claims listed above is insufficient to provide payment in full, the amount available for payment of that class of claims shall be distributed on equal percentage basis between the claimants within that class.~~
- ~~4. Any assets remaining after all claims listed in paragraph 1 of this article have been paid shall be distributed among the shareholders in proportion to their shares in the bank on the basis of priority of superior over normal rights.~~

**Article 46. Receiver's actions to dispose of the bank and its assets**

1. The receiver shall take the following actions to dispose of the bank's assets:
  - 1) arrange for the assumption of all or part of the bank's liabilities, as well as the bank's assets by others within one year;

- 2) sell the assets of the bank within two years.
2. In order to carry out a transaction provided for in paragraph 1, sub-paragraph 1 of this Article, the receiver may:
  - 1) reduce liabilities and deposit payments so that depositors or creditors receive not less than they would have received in liquidation;
  - 2) deduct loan repayments from payments owed by the bank to depositors or customers;
3. When administering and disposing of the assets of the bank the receiver shall ensure that depositors are given first priority.

#### **Article 47. Completion of the receivership of a bank**

The receiver of a bank shall draw up a report on implementation of a bank restructuring plan and completion of the sale of all the assets and submit it to the Bank of Mongolia. The receivership of the bank shall be considered completed when this report is approved and made public by the Bank of Mongolia. *(This article was revised based on the law dated July 21, 1999)*

#### **Article 48. Announcement of bankruptcy of a bank.**

1. Bankruptcy of a bank shall be announced by the court.
2. Liquidation of a bank after announcement of its bankruptcy shall be made in accordance with the Law on Bankruptcy and with principles established by this Law. *(This subparagraph was re-edited by Law of July 21, 1999.)*

### **Chapter Eight**

#### **Liabilities**

#### **Article 49. Legal liabilities imposed by supervisors appointed by the Bank of Mongolia for violation of the law**

1. If a breach of the banking legislation does not constitute a criminal offence, the following penalties shall be imposed by a supervisor appointed by the Bank of Mongolia:
  - 1) or opening a bank and/or a bank branch without a license-confiscation of all income illegally earned and a fine of 500,000 to 1 000,000 togrogs;
  - 2) for engaging in banking activities without obtaining a license from the Bank of Mongolia- confiscation of all income illegally earned and a fine of 250,000 to 500,000 togrogs;

- 3) for failure to comply with banking legislation or decisions of the Governor of the Bank of Mongolia for implementing the law - a fine of 50,000 to 100,000 togrogs for employees and officers of a bank and of 500,000 to 1,000, 000 togrogs for banks;
  - 4) for intentionally impeding supervisory actions - a fine of 10,000 to 25,000 togrogs for citizens and of 50,000 to 100,000 togrogs for bank employees and officers;
  - 5) for concealing payment and settlement documents or delaying transactions - a fine of 50,000 to 100,000 togrogs for bank employees or officers and of 500,000 to 1,000,000 for banks;
  - 6) for failure in submission of reports, balance sheets and other documents to the Bank of Mongolia in accordance with the relevant rules and for failure not making public the balance sheets according to Article 28' without serious grounds the bank shall be fined for up to 1,000,000 togrogs, and bank employees and officers for up to 250,000 togrogs." *(This subparagraph was re-edited by Law of August 20, 1998).*
  - 7) for failure to comply with requirements described in article 15 of this Law, - a fine of 500,000 to 1,000,000 togrogs for banks.
  - 8) if a report made public contained untrue, false information the bank or the executive director who served when the aforesaid report was made public shall be fined for up to 250,000 togrogs.
  - 9) for disclosure of untrue, false information or advertisement and violation of Article 7.1. - a fine of up to 1,000,000 togrogs for a bank and a fine of up to 250,000 togrogs for the bank's executive director who was acting during the disclosure of this information. *(This subparagraph was re-edited by Law of August 20, 1998).*
  - 10)for engaging in banking activities prohibited by this law- confiscation of all illegally earned incomes and a fine of up to 1,000,000 for a bank, 50,000-250,000 togrogs for bank employees and officers and for releasing confidential information, a fine of up to 250,000-500,000 togrogs for a person who released the information. *(This subparagraph was added by Law of July 21, 1999.)*
2. The fines shall be paid to the State budget.
  3. Financial losses resulting from a breach of this Law shall be recovered in accordance with the Civil Code
  4. If the penalties imposed in accordance with paragraph 1 of this article are considered to be unfair, relief may be sought by application to the administrative forums or the Courts.

**Article 50. Coming into force**

This law shall come into force on 1 October 1996.

Vice-chairman of the State Ih Hural of Mongolia  
Ts Elbegdorj

Ulaanbaatar

September 3, 1996