

Frequently asked questions on banking resolution

- 1. What is a banking resolution?

Banking resolution means the application of a resolution tool and/or the exercise of resolution powers by the National Bank of Moldova, in its capacity as resolution authority, for the purpose of achieving one or more of the resolution objectives (see question 7), where the conditions for resolution are met (see question 8), in compliance with specific principles (see question 9).

- 2. Why is banking resolution needed?

Law no.232/2016 on bank recovery and resolution partially transposes into national law the provisions of Directive 2014/59/EU, a document that materializes the European Union's efforts to create an effective crisis management framework for financial institutions. The adoption of this Directive was a fundamental reform of financial market regulation and supervision. It lays the foundations for a regime which ensures that authorities effectively coordinate their actions and have adequate tools for rapid intervention to deal with the difficulties banks face. The costs of any restructuring or liquidation of banks are borne by their shareholders and creditors.

- 3. Which is the resolution authority in the Republic of Moldova?

Law no. 232/2016 designates the National Bank of Moldova as the competent authority, as well as the resolution authority for banks of the Republic of Moldova.

In order to exercise its powers both as a competent authority and as a resolution authority, the law provides for ensuring operational independence within the internal organization of the NBM and avoiding conflicts of interest between the structure exercising the resolution function and the structure exercising the supervisory function, as well as between the structure exercising the resolution function and the structures exercising other functions as provided by law. The Law also provides for the establishment for the staff involved in the exercise of the resolution function of distinct reporting lines and structural separation from the staff exercising supervisory tasks or from the staff involved in the exercise of other functions of the National Bank of Moldova.

- 4. What is the planning stage?

At this stage, the following activities take place:

- a) banks shall prepare, and update recovery plans on an annual basis, which shall be submitted to and assessed by the National Bank of Moldova in its capacity as competent authority and resolution authority;
- b) The NBM, as resolution authority, shall draw up and update resolution plans, at least annually, which set out the actions that the NBM may take when a bank meets the conditions for triggering resolution.

- 5. When does early intervention apply?

Early intervention measures are applied when a bank violates or, due to, inter alia, a rapid deterioration of the financial situation is likely to violate in the near future the requirements provided by Law no.202 of 06.10.2017 on the activity of banks (hereinafter - Law no.202/2017) and/or the regulations issued by the National Bank of Moldova for the application of these requirements, or where the bank's capital is held by at least 50% by persons who do not have the permission of the National Bank of Moldova, if this is mandatory by law.

- 6. What early intervention measures can the National Bank of Moldova apply?

The NBM, as competent authority, in addition to the measures provided for in Law no. 202/2017, may apply early intervention measures, such as:

- a) to require the bank's management body to implement one or more of the arrangements or measures set out in the recovery plan or, in accordance with Article 10 of Law no.232/2016, to update such a recovery plan where the circumstances that led to early intervention differ from the assumptions set out in the initial recovery plan and to implement one or more of the arrangements or measures set out in the updated plan within a certain timeframe, in order to ensure that the conditions referred to in the introductory part of this Article no longer exist;
- b) to request the bank's management body to examine the situation, to identify measures to address the problems identified and to develop an action program for solving those problems and an appropriate implementation timetable;
- c) to request the bank's management body to convene a general meeting of the bank's shareholders or, if the management body fails to comply with this requirement, to convene such a meeting directly and, in either case, to set the agenda and request that certain decisions be considered for adoption by the shareholders;
- d) to request the replacement of one or more members of the bank's management body, if these persons prove unfit for the performance of their duties within the meaning of Law no.202/2017 and of the regulations issued by the National Bank of Moldova in its application;
- e) to require the bank's management body to develop a plan for negotiating debt restructuring with some or all of the bank's creditors, in accordance with the recovery plan, as appropriate;
- f) to request changes to the bank's business strategy;
- g) to request changes in the legal structure or operational structure of the bank;
- h) to obtain, including through on-site inspections, and to provide the National Bank of Moldova, as resolution authority, with all information necessary to update the resolution plan and to prepare a possible resolution of the bank, as well as to carry out an assessment of the bank's assets and liabilities in accordance with the provisions of Articles 72-84 of Law no.232/2016.

- 7. Which are the resolution objectives?

În situația în care aplică instrumente de rezoluție și exercită competențe de rezoluție, Banca Națională a Moldovei, în calitate de autoritate de rezoluție, are în vedere și alege acele instrumente și competențe care permit realizarea în cel mai înalt grad a următoarelor obiective:

- a) asigurarea continuității funcțiilor critice (de ex. referitoare la: depozite, servicii de plată, transferuri);
- b) evitarea efectelor negative semnificative asupra stabilității financiare;
- c) protejarea fondurilor publice prin reducerea la minimum a dependenței de sprijinul financiar public extraordinar;
- d) protejarea deponenților care intră sub incidența legislației privind garantarea depozitelor;

- e) protejarea fondurilor și activelor clienților.

- 8. What conditions trigger a resolution action?

The National Bank of Moldova, as the resolution authority, shall take a resolution action on a bank only if it considers that the following three conditions are cumulatively fulfilled:

1. it is found that the bank is entering or is liable to enter a state of major difficulty, which would imply that at least one of the following conditions exists:
 - a) the bank is in breach of the requirements underlying the maintenance of the license or there are objective indications that the bank will be in breach of these requirements in the near future, to an extent that would justify the withdrawal of the license including;
 - b) the bank's assets are less than its liabilities or there is objective evidence that this will happen in the near future;
 - c) the bank is unable to pay its debts or other obligations as they fall due, or there are objective indications that this will happen in the near future;
 - d) extraordinary public financial support is needed (with some exceptions);
 - e) the capital of the bank is held at least 50% by persons who do not have the permission of the National Bank of Moldova, or when shares representing at least 50% from the share capital of the bank were cancelled due to the non-compliance with the requirements regarding the quality of the shareholders stipulated in the applicable legislation in the banking field at the time of cancellation.
2. there is no reasonable prospect that the state of major difficulty could be prevented, within a reasonable time, by alternative private sector measures, including measures taken by an institutional protection system, or supervisory measures;
3. Resolution action is necessary from a public interest perspective.

- 9. What general principles must be followed when undertaking resolution actions?

When applying the resolution tools and exercising the resolution powers, National Bank of Moldova observes the following principles:

- a) the shareholders of the bank under resolution bear first losses;
- b) the creditors of the bank under resolution bear losses subsequent to the shareholders, in accordance with the order of priority of their claims under forced liquidation proceedings, unless Law no.232/2016 expressly provides otherwise;
- c) the management body of the bank under resolution are replaced, except in those cases when the retention of the management body, in whole or in part, depending on the circumstances, is considered to be necessary to achieve the resolution objectives;
- d) the management body of the bank under resolution shall provide all necessary assistance to achieve the resolution objectives;
- e) individuals and legal persons are made liable under civil or criminal law for their responsibility for the failure of the bank;
- f) without prejudice to other provisions of Law no.232/2016, creditors of the same class are treated in an equitable manner, with the exception of creditors who have qualified holdings in the bank's share capital, former holders of quota in the bank's share capital, against whom measures have been ordered in case of non-compliance with the requirements on the quality of shareholding;
- g) no creditor shall suffer greater losses than those which he would have incurred if the bank had been liquidated through the forced liquidation procedure;
- h) the guaranteed deposits are fully protected;
- i) the resolution actions are carried out in compliance with the safety mechanisms of Law no. 232/2016.

- 10. Which are the resolution tools?

The National Bank of Moldova, as resolution authority, is empowered to apply the following resolution tools to banks if the conditions for triggering the resolution procedure are met:

- the sale of business tool;
- the bridge bank tool;
- the asset separation tool (only together with another resolution tool);
- the bail-in tool.

- 11. What is the "sale of business" tool?

The sale of business tool implies the exercise of the NBM power, as resolution authority, to transfer to a buyer who is not a bridge bank:

- a) shares or other ownership instruments issued by a bank under resolution;
- b) any of the assets, rights, or obligations of a bank subject to resolution or their totality.

Such transfer shall take place without obtaining the consent of the shareholders of the bank subject to resolution or of any third party other than the purchaser and shall not be subject to any procedural requirements under applicable company or capital market law, with some exceptions stipulated in Law no.232/2016.

- 12. What is the "bridge-bank" tool?

The bridge bank is a legal entity established by the Ministry of Finance, but controlled by the National Bank of Moldova, as resolution authority, created for the purpose of receiving and holding some or all of the shares or other ownership instruments issued by a bank under resolution or some or all of the assets, rights and obligations of one or more banks under resolution, with a view to maintaining access to critical functions and selling the bank.

Such transfer shall take place without obtaining the consent of the shareholders of the bank under resolution or of any third party other than the bridge bank and shall not be subject to any procedural requirements under applicable company or capital market law.

The NBM, as resolution authority, has the power to determine that a bridge bank shall be considered as a continuation of the bank under resolution and may continue to exercise all rights exercised by the bank under resolution in relation to the assets, rights or obligations transferred, including in respect of intellectual property rights, and that the total value of the obligations transferred to the bridge bank shall not exceed the total value of rights and assets transferred from the bank under resolution.

In order to meet the resolution objectives, the bridge bank may be set up and licensed without complying, for a period not exceeding 18 months, at the beginning of its operation, with the own funds requirements.

- 13. What is the "asset separation" tool?

Through the asset separation tool, the National Bank of Moldova, as resolution authority, is empowered to transfer the assets, the rights, or obligations of a bank under resolution or bridge bank to one or more asset management vehicles (see question 12). These powers shall be carried out without obtaining the consent of the shareholders of the bank under resolution or of any third party other than the bridge bank and is not subject to any procedural requirements laid down by applicable company law or capital market law.

- 14. What is an asset management vehicle?

For the purposes of the asset separation tool, an asset management vehicle is a legal entity that cumulatively fulfills the following requirements:

- a) the share capital is wholly or partly owned by one or more public authorities and the asset management vehicle is controlled by the National Bank of Moldova, as resolution authority, for the purposes of Article 231 paragraph (1) point b) of Law no. 232/2016 and, in particular, having regard to the provisions of Article 141 of the same law. The Deposit Guarantee Fund in the banking system, as administrator of the bank resolution fund, may be a shareholder of the asset management vehicle;
- b) it was created for the purpose of receiving, in whole or in part, the assets, rights and obligations of one or more banks under resolution or of a bridge bank.

The asset management vehicle manages the assets transferred to it with the aim of maximizing their value through eventual sale or orderly liquidation.

- 15. What is the "bail-in" tool?

The bail-in is the tool by which the resolution authority exercises value reduction powers and/or conversion of liabilities into shares or other instruments of ownership of banks, in order to absorb losses and recapitalize the bank to a sufficient extent.

Key principles:

- a) the application of an internal recapitalization measure will always be preceded by the absorption of losses by shareholders and holders of other equity instruments.
- b) no creditor incurs greater losses than those which it would have incurred if the institution had been wound up through insolvency proceedings.

A strict hierarchy of claims must be respected.

- 16. Which liabilities can be used in the application of the "bail-in" tool?

The bail-in tool may be applied by the National Bank of Moldova as resolution authority, to all liabilities of a bank except those that are excluded from the scope of this instrument.

The National Bank of Moldova, as resolution authority, does not exercise the powers of value reduction or conversion for the following liabilities:

1. covered deposits;
2. secured liabilities, including covered bonds and other covered liabilities and liabilities in the form of financial instruments used to hedge risks, which form an integral part of the underlying portfolio and which, under the legal framework, are secured in a similar manner to covered bonds;

3. liabilities arising by virtue of the bank's holding of assets or liquidity belonging to clients, including assets or liquidity belonging to clients held on behalf of a collective investment undertaking in transferable securities, provided that the client is protected under the applicable law on the forced liquidation procedure of the bank;
4. liabilities that arise by virtue of the existence of a fiduciary relationship between the bank, as fiduciary, and another person, as beneficiary, provided that the beneficiary is protected under the applicable insolvency and civil law;
5. liabilities to banks excluding entities belonging to the same group, with an initial maturity of less than seven days;
6. liabilities with a residual maturity of less than seven days compared to payment and settlement systems of transactions in financial instruments or operators of such systems or to participants in such systems and resulting from participation in such a system;
7. liabilities to the following entities:
 - a) the employee, in respect of salaries, pension benefits or other accumulated fixed remuneration, except for the variable component of remuneration not covered by a collective labor agreement;
 - b) commercial creditors, in order to make or not a profit arising from the provision to the bank of goods or computer services that are crucial for the daily conduct of its activities, including computer services, and, utility services, as well as rental, maintenance and repair of workspaces;
 - c) the State Tax Service and the social insurance authorities, provided that the debts in question are considered privileged claims under the applicable law;
 - d) deposit-guarantee schemes for liabilities arising from contributions due under the law on deposit-guarantee schemes.

When the application of bail-in is not possible within a reasonable time, it would either compromise the continuity of critical functions or give rise to risks for financial stability, the National Bank of Moldova, as resolution authority, may exclude in whole or in part certain liabilities from the application of that instrument.

• 17. Are public financial means involved in the implementation of resolution actions?

In order to participate in the resolution of a bank, including by intervening directly to avoid liquidation, with the aim of meeting the resolution objectives, extraordinary public financial support can be provided through additional financial stabilization instruments. Public instruments of financial stabilization shall be used as a last resort, following the assessment and examination of the possibility of using other resolution tools to the maximum extent possible, while taking into account the need to maintain financial stability.

The financial stabilization instruments are as follows:

- a) instrument of financial support through public capital contribution;
- b) the instrument of temporary transfer into private state ownership.

• 18. What safeguards are provided for creditors?

When the National Bank of Moldova, as resolution authority, applies one or more resolution tools, it shall take into account the following:

- a) where only certain parts of the rights, assets and liabilities of the bank under resolution have been transferred, shareholders and creditors whose claims have not been transferred shall receive as compensation for their claims at least an amount equal to the amount they would have received if the bank under resolution had been wound up by forced liquidation;
- b) where applying the bail-in tool, shareholders and creditors whose claims have been reduced or converted into equity do not incur greater losses than they would have incurred if the bank under

resolution had been wound up by forced liquidation.

• 19. What are the methods of financing the resolution?

In order to ensure the effective application of the resolution tools and powers by the National Bank of Moldova, as resolution authority, the bank resolution fund is established, the resources of which shall be used in accordance with the resolution objectives.

The resources of the bank resolution fund are constituted from the following sources of financing:

- a) annual contributions;
- b) extraordinary contributions;
- c) loans and other forms of financing.

In accordance with the legal provisions, banks are notified annually by October 31 about the size of the annual contribution to be paid by each bank in the following year, the tranches, and the payment deadlines.

The use of the resources of the bank resolution fund shall be decided by the National Bank of Moldova, as resolution authority, to cover the needs related to the effective application of resolution tools, as follows:

- a) to guarantee the assets or liabilities of the bank under resolution, a bridge bank or an asset management vehicle;
- b) to make loans to the bank under resolution, bridge bank or asset management vehicle;
- c) to purchase of assets of the bank under resolution;
- d) to provide the necessary funding to a bridge bank or asset management vehicle;
- e) to pay compensation to shareholders or creditors under this law;
- f) to provide funding to the bank under resolution in lieu of reducing the amount or conversion of the liabilities of certain creditors, when the bail-in tool is applied, and the bank resolution authority decides to exclude certain creditors from the scope of bail-in under this law;
- g) to grant loans to other financing mechanisms on a voluntary basis, in accordance with this law;
- h) for the repayment of the contracted loans and the costs associated with them;
- i) for any combination of the measures referred to in points (a) to (h).

The resources of the bank resolution fund may be used to take the measures set out in the previous paragraph and in relation to a potential acquirer under the sale of business tool.

• 20. With which national and international authorities does the National Bank of Moldova (NBM) cooperate as resolution authority?

In order to ensure an efficient collaboration for the exchange of information in the context of the implementation of the provisions of Law no. 232/2016 on the recovery and resolution of banks, the National Bank of Moldova has concluded Cooperation Agreements with some national authorities as follows:

Cooperation agreement between the Ministry of Finance and the National Bank of Moldova on the application of bank resolution tools (since 2019) - establishes the mechanism for effective cooperation between the parties on the application of bank resolution tools, as provided for by Law no.232/2016 on the recovery and resolution of banks;

Cooperation Agreement between the NBM and the Deposit Guarantee Fund in the Banking System (since 2020) - sets out the manner of cooperation in the areas of competence of the parties regarding the exchange of information related to the situation of the banking sector, and the resolution fund managed by the FGDSB, pursuant to Law no.232/2016 on the recovery and resolution of banks;

Cooperation Agreement between the Public Institution "Public Services Agency" and the National Bank of Moldova (since 2020) - ensures the exchange of information between the parties in the areas of competence, including on the basis of the provisions of Law no. 232/2016.

The NBM also has concluded cooperation agreements with foreign authorities regarding the efficient exchange of information in areas of common interest, including in the field of crisis management, namely:

Cooperation Agreement between the National Bank of Moldova and the National Bank of Romania (since 2021);

Memorandum of Understanding between the National Bank of Moldova and the European Central Bank (since 2020);

Memorandum of Understanding between the National Bank of Moldova and the central bank of Hungary (Magyar Nemzeti Bank) (since 2020).

Furthermore, the National Bank of Moldova, as a resolution authority, in order to strengthen financial stability and to ensure efficient inter-institutional information exchange, continuously develops bilateral relations with other national and international authorities.

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