

DECISION
on the approval of the Regulation
on qualifying holdings of banks

No. 113 of June 2, 2022
(in effect as of 15.08.2022)

Official Monitor of the Republic of Moldova No. 177 of June 15, 2022, Art. 702

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REGISTERED:
Ministry of Justice
of the Republic of Moldova
No. 1723 of June 9, 2022
Minister _____ Sergiu LITVINENCO

Pursuant to Art. 27 paragraph (1) item c), of the Law on the National Bank of Moldova No. 548/1995 (republished in the Official Monitor of the Republic of Moldova, 2015, No 297-300, Art. 544), with subsequent amendments, Art. 55-58 of the Law on the activity of banks No. 202/2017 (Official Monitor of the Republic of Moldova, 2017, No. 434-439, Art. 727), with subsequent amendments, the Executive Board of the National Bank of Moldova

DECIDES:

1. To approve the Regulation on qualifying holdings of banks (attached).
2. To repeal the Regulation No. 330/2016 on the approval and repeal of certain normative acts of the National Bank of Moldova (Official Monitor of the Republic of Moldova, 2016, No. 441-451, Art. 2131), registered at the Ministry of Justice under No. 1155 of December 16, 2016.
3. Applications for obtaining prior approval regarding the acquisition of qualifying holdings submitted to the National Bank of Moldova and unresolved upon the entry into force of this decision shall be examined and addressed according to the provisions of the Regulation referred to in paragraph 1, provided that they are completed by the bank, no later than 30 days from the entry into force of this decision, of the set of documents, according to the requirements of this Regulation. Applications and documents shall be examined in accordance with the terms of the Regulation referred to in paragraph 1, calculated on the date the set of documents is filled in. If the application and documents are not filled in within the indicated period, the National Bank of Moldova shall inform the bank about the termination of the administrative procedure
4. This Decision shall enter into force at the expiration of 2 months from the date of publication in the Official Monitor of the Republic of Moldova.

CHAIRMAN
OF THE EXECUTIVE BOARD

Octavian ARMAȘU

No 113, Chisinau, 2 June 2022

**REGULATION
on qualifying holdings of banks**

**Chapter I
GENERAL PROVISIONS**

1. This Regulation establishes the requirements regarding the procedures for obtaining the prior approval of the National Bank of Moldova in the case of acquisition of qualifying holdings of banks in the capital of companies.

2. The terms and expressions used in this Regulation have the meanings provided for in the Law on the activity of banks No. 202/2017, as well as in the normative acts of the National Bank of Moldova drawn up for its application.

3. Banks shall submit to the National Bank of Moldova the report on all holdings in the capital of companies drawn up in accordance with the Instruction on the compilation and submission of reports by banks for prudential purposes, approved by the Decision of the Council of Administration of the National Bank of Moldova No. 279 of December 1, 2011 (Official Monitor of the Republic of Moldova, 2011, No. 216-221, Art. 2008).

**Chapter II
LIMITS AND EXEMPTIONS**

4. The bank is prohibited to have a qualifying holding that exceeds 10% of the bank's eligible capital in a company or to acquire qualifying holdings in a company, if in this way the bank can exercise control over it.

5. The provisions of paragraph 4 shall not apply to the qualifying holdings of the bank in the capital of:

- 1) the company in the financial sector;
- 2) the company, which is not a company in the financial sector, but which performs activities considered by the National Bank of Moldova to be any of the following:
 - a) activities that are a direct extension of banking services - the provision by the company of services to the bank's clientele which, although are not auxiliary to the activity carried-out by the bank, represent an extension of banking operations;
 - b) activities auxiliary to banking services – activities performed by the company, whose main activity consist of holding or management of goods or a similar activity, which is auxiliary to the main activity of one or more banks;
 - c) leasing activities, factoring, management of investment funds, management of data processing services or any other activity similar to those mentioned.

6. Within the meaning of the provisions of paragraph 5 subparagraph 2), the banks, before making the investment, shall submit an application, in Romanian, signed by the authorized person with the right to sign within the bank's executive body, by which they request the opinion of the National Bank of Moldova regarding the classification of the activities carried out by the company within the categories provided for in items a), b) and c) of the afore-mentioned subsection. For this purpose, the banks shall attach to the application the necessary information and documents to show that the activities to be conducted by the company have the meaning specified in paragraph 5 subparagraph 2).

7. The National Bank of Moldova may request additional documents and information, perform additional investigations, including consult the public authorities, should the documents and information submitted in accordance with paragraph 6 are insufficient to provide its opinion.

8. If the National Bank of Moldova requests additional documents and information, it shall notify the bank, in written form, of this fact within 5 business days from the date the application has been submitted and shall inform the bank of the need to present the requested documents and information within no more than 10 business days from the date of notification.

9. In the event that the bank does not submit the documents and information within the period referred to in paragraph 8, the National Bank of Moldova shall inform the bank about the termination of the administrative procedure within 3 business days from the expiry of the granted period.

10. Within 30 days after the expiry of the deadline granted to the bank according to paragraph 8, the National Bank of Moldova shall respond to the request. The National Bank of Moldova can establish, upon informing the bank, a period longer than the specified 30 days, but which will not exceed 90 days under the terms of the Administrative Code of the Republic of Moldova.

11. If the National Bank of Moldova needs to perform additional investigations and/or to consult public authorities, the deadline mentioned in paragraph 10 shall be suspended.

12. If the application requesting the opinion of the National Bank of Moldova on the classification of the activities performed by the company in the categories provided for in paragraph 5 subparagraph 2) is rejected, the grounds based on which the application has been rejected shall be indicated. The following are considered grounds for rejecting the request:

1) as a result of the assessment of the documents held, the National Bank of Moldova decides that the activity performed by the company does not fall into one of these categories; and/or

2) submitting erroneous, inauthentic and/or contradictory information to the National Bank of Moldova.

13. Banks are prohibited from having aggregate qualifying holdings that exceed 20% of their eligible capital in companies other than those mentioned in paragraph 5.

14. Holdings in companies that are not mentioned in paragraph 5 subparagraph 1) and 2) shall not be included in the calculation of the bank's eligible capital limits, if any of the following conditions are met:

1) the holdings are held temporarily during a financial assistance operation intended for the restructuring and rescue of the company, as provided for in the normative acts of the National Bank of Moldova on own funds;

2) holdings represent a position related to firm takeover commitments, held for 5 business days or less. The firm takeover commitment represents the underwriting/subscription activity and includes: the assistance given to the issuer of capital instruments when preparing and perfecting the public offer prospectus and other documents necessary to register the capital instruments of the public offer on the primary market; promoting the public offer and the placement of the issuer's capital instruments on the primary market; servicing the issuance of capital instruments in the financial relations of the issuer with the holders of capital instruments, if this is provided for in the contract, etc.;

3) the holdings are held by the bank in its own name, but on the account of other persons.

15. Holdings in financial assets, other than holdings in affiliated companies and capital instruments intended for long-term use in the normal course of the company's activity, are not taken into account in the calculation of the limits provided for in paragraph 4 and 13.

Chapter III

REQUIREMENTS REGARDING THE ACQUISITION OF QUALIFYING HOLDINGS

16. The qualifying holdings referred to in paragraph 14 and 15 may only be acquired upon the prior approval of the National Bank, under the conditions of paragraph 19-22 of this Regulation.

17. If, as a result of the acquisition by the bank of any qualifying holding in a company from another country, the respective company enters the scope of prudential consolidation of the bank, such holdings may only be acquired upon the prior approval of the National Bank of Moldova, under the conditions of paragraph 23 of this Regulation.

18. Qualifying holdings, other than those subject to prior approval according to paragraph 16 and 17, shall be notified to the National Bank of Moldova within 5 business days from the date of their acquisition by the bank.

Chapter IV

OBTAINING PRIOR APPROVALS REGARDING THE ACQUISITION OF QUALIFYING HOLDINGS

19. In order to request the prior approval of the National Bank of Moldova regarding the acquisition of qualifying holdings referred to in paragraph 14 and 15 it is necessary to submit an application, in Romanian, signed by the person authorized to sign within the executive body of the bank, by attaching the information/documents depending on the type of holding, according to paragraph 20-22.

20. Banks that intend to acquire a temporary holding during a financial assistance operation intended for the restructuring and rescue of a company shall submit to the National Bank of Moldova,

attached to the application, pertinent information from which it may be expressly concluded that the capital instruments held in that company are intended to provide a financial assistance aimed for restructuring, namely:

- 1) the decision of the management body regarding the temporary holding by the bank of the holdings in the capital of the legal entity;
- 2) information regarding the legal acts expected to be concluded by the bank in this regard and the bank's obligations that will arise from these acts;
- 3) description of the proposed transaction, including information related to the capital instruments that constitute the object of holding;
- 4) a financial assistance operations plan of that clearly foresees the stages, the calendar, the objectives and specifies the interaction between the temporary holdings and the financial assistance operation;
- 5) the reasons underlying the transaction and its economic reasoning that served as the basis for the management body to take the respective decision;
- 6) the list of shareholders/associates owning holdings representing 20% or more of the capital of the company in which the bank intends to acquire a temporary holding, indicating the name/surname, first name of the person, country of residence, value and amount of the owned holding;
- 7) the list of commercial companies in which the company, in which the bank intends to acquire a temporary holding, holds at least 20% of their share capital, indicating the name, country of residence, value and amount of the owned holding;
- 8) the list of members of the management body of the company in which the bank intends to acquire a temporary holding, indicating their functions, the name of the commercial companies where they exercise the function of administrators (name of the position held) and/or the holdings owned in their capital (the size of the owned holding shall be indicated in %).

21. Banks that intend to acquire a holding that represents a position related to firm takeover commitments, maintained for 5 business days or less, shall submit to the National Bank of Moldova, attached to the application, the following information:

- 1) the decision of the management body regarding the holding which represents a position related to firm takeover commitments, maintained for 5 business days or less;
- 2) information regarding the legal acts expected to be concluded by the bank in this regard and the bank's obligations that will arise from these acts;
- 3) description of the proposed transaction, including information related to the capital instruments that constitute the object of the holding;
- 4) description of the proposed transaction;
- 5) the reasons underlying the transaction and its economic reasoning that served as the basis for the management body to take the respective decision;
- 6) the list of shareholders/associates owning holdings that represent 20% or more of the capital of the company in which the bank intends to acquire a holding that represents a position related to firm takeover commitments, indicating the name/name and surname of the person, country of residence, value and the amount of the holding;
- 7) the list of commercial companies in which the company, in which the bank intends to acquire a holding, which represents a position related to firm takeover commitments that holds at least 20% of their share capital, indicating the name, country of residence, value and amount of the owned holding;
- 8) the list of members of the company's management body, indicating their functions, the name of the commercial companies where they exercise the function of administrators (name of the position held) and/or the holdings owned in their capital (the size of the owned holding shall be indicated in %).

22. Banks that intend to acquire a holding in their own name, but on the account of other persons, shall submit to the National Bank of Moldova, attached to the application, the following information:

- 1) the decision of the management body regarding the temporary holdings by the bank of holdings in the capital of the legal entity, on its own behalf, but on the account of other persons;
- 2) information regarding the legal acts expected to be concluded by the bank on its own behalf and the obligations of the bank that will arise from these acts;
- 3) information related to the capital instruments that constitute the object of the transaction;
- 4) description of the type of the proposed transaction;
- 5) the reasons underlying the transaction and its economic reasoning that served as the basis for the management body to take the respective decision;

6) the existing financial and non-financial objectives between the parties that expect to perform the transaction;

7) the joint activities that shall be performed by the bank and the company;

8) the list of shareholders/associates owning holdings representing 20% or more of the capital of the company in which the bank intends to acquire a holding on its own behalf, indicating the name/name and surname of the person, country of residence, value and amount of the owned holding;

9) the list of commercial companies in which the company, in which the bank intends to acquire a holding, on its own behalf, holds at least 20% of their share capital, indicating the name, country of residence, value and amount of the owned holding;

10) the list of members of the management body of the company in which the bank intends to acquire a holding on its own behalf, indicating their functions, the name of the commercial companies where they exercise the function of administrators (name of the position held) and/or the holdings owned in their capital (the size of the owned holding shall be indicated in %).

23. In order to request the prior approval of the National Bank regarding the acquisition of qualifying holdings in a company from another state, in the event that following the respective acquisition, the enterprise would enter the scope of prudential consolidation of the bank, it is necessary to present an application signed by to the authorized person with the right to sign within the Executive Board of the bank by attaching the following information:

1) the decision of the management body of the bank regarding the acquisition of the qualifying holding, resulting from:

a) the company in which the holding is to be acquired;

b) the value of this holding, in absolute amount and by reference to the level of the eligible capital of the bank;

c) the share of the owned holding (according to the nominal (fixed) value) in the company's share capital;

2) the economic argument regarding the opportunity to acquire qualifying holding;

3) the copy of the company status, as the case may be, of other incorporation documents, the extract from the State Register issued by the competent body for the state registration of legal entities and their record keeping, or any other equivalent official document issued by the authority responsible for registering the company from the country where it is located, which certifies at least the date of registration, the name, the object of activity and the persons legally authorized to represent the company;

4) the annual financial statements of the company from another state for the last 2 years or if the company has been active for less than 2 years – for the entire period, subject to independent audit or confirmed by the responsible state authority, according to the place of registration, if at the general meeting of the shareholders, it was not foreseen to carry out the audit, except in the case when the bank participates in the establishment of the legal entity;

5) a presentation of the legislative and institutional framework of the state in which the company is located, which includes at least information on: the supervisory authorities, the legislation regarding professional secrecy in the financial sector, the prevention of money laundering and the financing of terrorism, the standards regarding the knowledge of the clientele and any other relevant information regarding possible impediments in carrying out prudential supervision by the National Bank of Moldova, such as restricting access to information or the possibility of carrying out on-site checks;

6) the declaration of the authority responsible for the supervision of the company according to which it does not oppose the acquisition of the holding;

7) the list of shareholders/associates who own holdings that represent 20% or more of the capital of the company from another country in which the bank intends to own the holding, indicating the name/name and surname of the person, country of residence, value and amount of the owned holding;

8) the list of commercial companies in which the company from another country owns at least 20% of their share capital, indicating the name, country of residence, value and amount of the owned holding;

9) the list of members of the management body of the company from another country, indicating their functions, the name of the commercial companies where they exercise the function of administrators (name of the position held) and/or the holdings owned in their capital (the size of the owned holding shall be indicated in %).

24. The prior approval of the National Bank of Moldova regarding holdings that are held temporarily during a financial assistance operation intended for the restructuring and rescue of the

company shall be granted for a period that does not exceed the period specified in the plan of financial assistance operations and shall not be granted for a period greater than 5 years.

25. The economic reasoning provided for in paragraph 20 subparagraph 5), paragraph 21 subparagraph 5), paragraph 22 subparagraph 5), and paragraph 23 subparagraph 2) must include at least information regarding:

- 1) the purpose pursued by acquiring the holding;
- 2) the administrative and financial capacity of the bank to acquire and manage the qualifying holding;
- 3) identifying, managing, monitoring and reporting the risks assumed by the bank by acquiring the holding and the impact on the financial situation at the individual and consolidated level of the bank;
- 4) if applicable, depending on the ownership structure of the company in which holding is to be acquired and the influence the bank will have on the company's management, the bank's strategy regarding the company's activity, including the expected changes at the level of its administration and management.

26. In the case of the acquisition of a qualifying holding in a company that is to be established, the documentation provided for in paragraphs 21 and 22 shall be replaced by the draft of its constitutive act and, respectively, with estimates of the main elements of the balance sheet and the profit and loss account for the first 2 years of the company's activity.

27. Any increase in both the absolute value of the qualifying holding and the relative value of the qualifying holdings provided for in paragraphs 20-23, after obtaining the prior approval of the National Bank of Moldova, can be performed with the written permission of the National Bank of Moldova. The request for approval regarding the subsequent increase in the qualifying holding shall be accompanied by the following documents:

- 1) Documents provided for in paragraph 23 subparagraph 1), 3), 4), and 6);
- 2) The most recent audited financial statement of the company in which the holding is intended to be acquired and, if applicable, the one at the level of the accounting consolidation perimeter of which the company is a part, concluded according to international financial reporting standards.

28. Within 30 days from the date of receipt of the complete set of documents in accordance with paragraphs 20-23, the National Bank of Moldova shall decide on granting or rejecting prior approval regarding the acquisition of qualifying holding, informing the bank of its decision. The decision on granting or rejecting prior approval, in the case of paragraph 21, shall be issued within 10 days. The National Bank of Moldova may establish, with the bank's information, a longer term for issuing the decision, which will not exceed 90 days, under the terms of the Administrative Code of the Republic of Moldova.

29. If the set of documents submitted to the National Bank of Moldova is not complete and the bank does not submit within the deadline set by the National Bank of Moldova the necessary documents to complete it, the National Bank of Moldova shall inform the bank about the termination of the administrative procedure, after the expiration of 3 business days from the deadline set by the National Bank of Moldova.

30. If the documents or information submitted in accordance with paragraphs 20-23 are insufficient for making the decision, the National Bank of Moldova may request additional documents and information, may perform additional investigations, including consultation with public authorities. The bank is obliged to submit the additional information and documents within the term indicated by the National Bank of Moldova, the period during which the term established by the National Bank of Moldova according to paragraph 28, if applicable, the term indicated according to paragraph 29 shall be suspended.

31. Within 12 months after the date of issuance of the prior approval of the National Bank of Moldova and in case the documents presented when submitting the application have not undergone changes, the bank shall notify the National Bank of Moldova regarding the acquisition of the qualifying holding or the partial acquisition of the qualifying holding in the company's capital. If, for 12 months, the qualifying holding in the capital of the company has not been acquired, the prior approval loses its validity.

32. When evaluating the request for prior approval for the acquisition of the qualifying holdings referred to in paragraphs 20-23, it shall be taken into account that the acquisition of the holdings does not affect the bank's ability to comply and continue to comply with the prudential indicators provided for in Law on the activity of banks No. 202/2017 and in the normative acts issued in its application. The prior approval loses its validity, if for 12 months the acquisition of the qualifying holding in the capital of the

enterprise did not take place or if only the partial acquisition of the qualifying holding took place, for which the approval was requested.

33. If the application for approval is rejected, the grounds on which it is rejected shall be indicated. The following are considered grounds for rejecting the application for approval by the National Bank of Moldova:

1) as a result of the evaluation of all the documents and information held, the National Bank of Moldova finds that the criteria provided for in Article 58 paragraph (2), items a) and b) of Law on the activity of banks No. 202/2017 are not met; and/or

2) incomplete, erroneous, inauthentic and/or contradictory information and documents are submitted to the National Bank of Moldova; and/or

3) non-compliance with the prudential indicators provided for in Law on the activity of banks No. 202/20107 and in the normative acts issued in its application; and/or

4) the performed acquisition will lead to non-compliance with the prudential indicators.