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CHAMBERS GLOBAL PRACTICE GUIDES

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# Banking Regulation 2023

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**Costa Rica: Law & Practice**

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## Law and Practice

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## 1. Legislative Framework

### 1.1 Key Laws and Regulations

#### Key Laws and Regulations

The principal law regulating the banking sector is the Law of the Republic of Armenia (RA) On Banks and Banking (Banking Law), under which the registration and licensing of banks and Armenian and foreign banks' branches, and representations, corporate governance, banking, and financial operations are regulated.

The formation and procedures of corporate governance bodies, as well as the scope of authorities, are regulated by the rules determined under the Law of RA On Joint-Stock Companies, even where the bank is a limited liability company or a co-operative bank (currently all banks established and acting in Armenia are joint stock companies).

The peculiarities of liquidation of banks are subject to the regulation of the Law of RA On Bankruptcy of Banks, Credit Organisations, Investment Companies, Investment Fund Managers and Insurance Companies.

The following laws of the RA regulate the specifics of banking activities.

- On Consumer Credits, which determines rules of interaction with customers (natural persona, individual entrepreneurs, and tiny commercial organisations) while providing small credits for particular purposes.
- On Attraction of Banking Deposits, under which the rules imposed on banks attracting deposits from natural persons are established.
- On Housing Mortgage Crediting, which provides protection for customers that are natural persons when they are borrowing for

purchase, construction and renovation of an apartment or house subject to mortgage.

- On Bank Secrecy, under which the rules of determination of bank secrecy, as well as its processing, are defined.
- On Guaranteeing Compensation of Bank Deposits, which provides for the compensation of bank deposits should banks fail to repay them.

There are a number of laws that are applicable to banks and banking activity, for instance:

- the Law of the RA on the Central Bank;
- the Civil Code of the RA;
- the Law of the RA on Combating Money Laundering and Terrorism Financing;
- the Law of the RA on Financial System Mediator; and
- the Law of the RA on Securities Markets.

A lot of technicalities and details related to banks and banking activities are regulated under the regulations adopted by the regulator. For instance, Regulation 1 is on Registration and Licensing of Banks and Branches of Foreign Banks, Registration of Bank Branches and Representative offices, qualification, and registration of managers of banks and branches of foreign banks. Regulation 2 is about regulation of banking and prudential standards of banking.

#### Regulator

The Central Bank of Armenia (CBA) exercises regulatory authority over all financial systems in Armenia, including banks and banking activities. The CBA also has authority with regard to registration and issuance of banking licences. The Commission on protection of competition of Armenia has authority with regard to the permission concentration of banks.



## 2. Authorisation

### 2.1 Licences and Application Process

#### Licence

According to the Banking Law, a bank is a legal entity entitled to perform banking activities based on a licence. Banking activities are defined as accepting or soliciting deposits and using those amounts to provide loans or to invest on its behalf.

A banking licence is the only type of licence that gives holders the right to perform banking activities.

#### Banking Activities

The list of activities that an entity is permitted by the banking licence to perform are the following:

- to accept deposits;
- to provide loans;
- to carry out financing in return for the concession of monetary claims (factoring);
- to provide bank guarantees;
- to issue or implement settlements with letters of credit;
- to provide payment and settlement services, including open and run bank accounts (includes correspondent banking accounts);
- to issue and serve securities, perform transactions with securities and derivative financial instruments;
- to provide investment services and non-core investment services, as it is described under the Law on Securities Market;
- to carry out investment fund (including pension fund) custody activities should the bank meet the additional requirements of the laws;
- to manage funds of other persons (trust management), except for a package of securities, the management of which is carried out as a

- part of the provision of the investment services by the bank;
- to purchase, sell off and manage bank gold and standardised bullions and commemorative coins;
- to purchase, sell off (exchange) foreign currency;
- to carry out leasing;
- to take into safe custody precious metals, jewellery, documents, and other valuables;
- to provide financial consultation other than those classified as investment services;
- to establish and serve the information system of customers' creditworthiness;
- to collect debts;
- to sell insurance policies and/or agreements and carry out operations of an insurance agent; and
- to perform functions of the account operator in cases allowed under the Law of the RA On Cumulative Pensions.

Banks cannot pursue the following business activities: industry, trade and insurance.

The CBA may allow the banks to perform activities and operations beyond those listed, provided that:

- those other activities and operations originate from or closely relate to the named permitted activities of banks; and
- they do not contradict the objectives of the Banking Law or substantially endanger the interests of a bank's depositors and creditors.

#### Authorisation Process

A banking licence can be obtained if the CBA:

- grants preliminary consent to licensing;
- registers an entity or a branch of a foreign bank; and

- grants a banking licence.

## Submission for Preliminary Consent

The initiating party (bank's shareholder) or foreign bank (for a foreign bank's branch in Armenia) may apply for preliminary consent to licensing by submitting the following to the CBA:

- a draft charter, along with the internal acts to which the draft makes reference;
- a business plan;
- a founding agreement for a new bank's establishment and a corporate package for a foreign bank's branch; and
- information about shareholders and affiliated persons, as well as financial balance sheets and audit reports of legal entities.

The factors that may lead to the rejection of an application are linked to the financial criteria, compliance with the laws and regulation, and reputation.

## Registration

For the registration of a bank or a branch of a foreign bank, the following must be submitted to the CBA:

- corporate documents on incorporation of the entity or branch, including the charter;
- a statement on management staff, as well as the request to register them with all required information;
- a request for registration of firm name;
- statements on the compliance of the significant shareholders with the requirements of the Banking Law; and
- information about the significant shareholders and their affiliates.

The registration of a bank may be rejected, for example, in the following circumstances.

- Doubtful or false data has been submitted.
- Incomplete or insufficient documents have been submitted.
- Where the shareholders or their affiliates:
  - (a) are in a poor financial state;
  - (b) may negatively impact the financial state of the bank; or
  - (c) may hinder the effective supervision of the CBA.

## Licensing

A registered bank may apply to the CBA for a banking licence within one year of receiving preliminary consent, and it must comply with the following requirements, among others:

- total minimum capital is paid (AMD30 billion);
- office spaces are in line with the technical and security requirements of the CBA, as is the business plan;
- an internal structure and operation system are created; and
- management staff of the bank have the relevant CBA qualification certificates.

The CBA may reject a request for a banking licence if the conditions have significantly changed since the issuance of preliminary consent to licensing, the bank's management has undertaken illegal discrediting deeds after the registration of the bank, or the financial status of significant shareholders has changed.

## 3. Control

### 3.1 Requirements for Acquiring or Increasing Control over a Bank Classification of Shareholders

According to the Banking Law, a shareholder may be significant or insignificant. Significant shareholding may be direct or indirect. Signifi-

cant shareholding is direct if one holds 10% or more of the voting shares in the statutory capital of the bank. The significant shareholding is indirect if the holder satisfies one of the following conditions.

- They do not hold shares in the bank's statutory capital, or they hold less than 10% of the voting shares or shares with no voting rights, but under the CBA's criteria, by means of that participation through their business authority, they have the capacity to:
  - (a) directly or indirectly predetermine the decisions of the bank's governance bodies;
  - (b) significantly influence the decision-making or implementation of the decisions; or
  - (c) predetermine the major directions or fields of the bank's operation.
- They do not hold shares in the bank's statutory capital, or they hold less than 10% of the voting shares or shares with no voting rights, but through the power of right of claim to the bank they have the capacity to:
  - (a) predetermine the decisions of the bank's governance bodies;
  - (b) significantly influence the decision-making or implementation of the decisions; or
  - (c) predetermine the major directions or fields of the bank's operation.
- They hold more than 50% of the allocated shares of a company, which makes them the bank's direct significant shareholder.
- They either have or do not have participation in the statutory structure of a company that is the bank's significant shareholder, but through its business authority under the CBA's criteria it has the capacity to:
  - (a) predetermine the decisions of the managing bodies of a company;
  - (b) significantly influence the decision-making or implementation of the decisions; or

- (c) predetermine the major directions or fields of the company's operation of the legal entity.

## Shareholding Thresholds

While acquiring significant shareholding through one or various transactions (ie, those concluded outside of the stock exchange or through stock exchange but exceeding 20% of a bank's statutory capital) a person or their affiliate must have the CBA's preliminary consent. The following information must be disclosed to the CBA when requesting preliminary consent:

- full information about prospective direct significant shareholders;
- full information about prospective indirect significant shareholders (if applicable); and
- proof of legality of the sources of funds for the purchase.

Physical entities permanently residing or acting in offshore zones as per the CBA's list, as well as legal entities or entities with no legal status determined or incorporated there and related parties may acquire participation in the statutory capital of a bank (regardless of the extent of the participation) through one or various transactions only if preliminary consent was granted.

The CBA's preliminary consent is required for each new transaction purporting to increase the shareholding of person and/or affiliate thereof in excess of 10%, 20%, 50% and 75%, respectively.

The CBA's preliminary consent must also be issued for transactions under which the participation of the significant shareholder decreases from 75%, 50%, 25% and 10% respectively.

The reasons for rejection of preliminary consent are usually linked to reputation, prudence, competition or general legal non-compliance.

## 4. Supervision

### 4.1 Corporate Governance Requirements

#### Corporate Governance

The bank's corporate governance bodies are:

- the general meeting of shareholders;
- the board;
- the executive director or the chairperson of the directorate (if there is a directorate then the executive director is its chairperson ex-officio); and
- the directorate (if there is one under the bank's charter).

The bank must have a chief accountant, an internal audit department, a person responsible for risk management and a person responsible for compliance.

Managers (management staff) of the bank are:

- the chairman of the board, their deputy and members of the board, the executive director and their deputies;
- the chief accountant and their deputy;
- head of internal audit, members of the internal audit;
- risk managers;
- compliance officers;
- members of the bank's directorate;
- heads of territorial and structural subdivisions (heads of department, division, unit); and
- employees of the departments that, in the CBA's well-reasoned opinion, have direct links to the main activities of the bank, operate under the immediate supervision of its

executive director, or have any influence on the decision-making process of the managing body.

#### The General Meeting of Shareholders

The general meeting of shareholders is the supreme managing body of the bank. The status, authorities and operation of this corporate governance body is regulated by the Banking Law, the Law on Joint Stock Companies, the charter and internal regulation on the bank's operation (if adopted by the bank).

Shareholders may participate in the meetings in person or by representative. The general meeting exercises only its exclusive authorities defined under the law.

#### The Board

The bank's board carries out the general management of the bank's activities. The board acts in accordance with the line of procedures defined in the laws, the charter of the bank, and internal acts regarding board procedure. The list of issues over which the board has competency is prescribed under the law. At least once a year, the board must examine the external audit(s), and at least once per quarter, it must examine the report of the internal audit, the executive director and the chief accountant.

#### Executive Governance Body and Other Managers

The executive director and directorate (if any) exercise the powers of day-to-day management of the bank. Also, the executive director and directorate have authority regarding the issues not within the capacity of the general meeting, the board or the internal audit.

The other managers of the bank are responsible for the specific areas of bank activity as per their job titles and descriptions.

## 4.2 Registration and Oversight of Senior Management

### Designation

The bank's board must consist of at least five and at most 15 members. The members of the board are elected by general meeting and/or appointed by a shareholder or group of shareholders holding 10% or more of the voting shares. The board member must be a natural person and may be a member of boards of other banks.

Board members must have relevant experience of six years in banking, insurance or the securities market, three of which must have been spent holding one of the following positions:

- executive director or deputy thereof;
- board member;
- directorate member;
- representative of an international financial institution; or
- has a PhD in economics or four years of research expertise.

A board member cannot be the member of an executive body or hold another position in the bank.

It is prohibited to appoint a person to a managerial position if they:

- have committed a crime deliberately as per final judicial act;
- are deprived by the court of the right to hold certain relevant positions;
- are a bankrupt or have outstanding liabilities;

- do not comply with CBA requirements regarding qualification, professional integrity, ability or capacity;
- are engaged in a criminal case as a suspect, defendant or accused.

Under the law, the board is entitled to appoint the executive director, their deputies, the members of directorate, and the chief and members of internal audit. The authority of appointment of the other managers is subject to determination under the charter.

Generally, an acting manager can be appointed without qualification or registration for a period of three months, within which the qualification and registration processes must be fulfilled. In some cases, certain managers may be appointed as an acting manager for a period longer than three months, for instance, the deputy of an executive director may be appointed executive director in this way.

### Qualification

It is mandatory that the following managers have a CBA qualification certificate or confirmation from the CBA of their qualities:

- the board's chairperson and their deputy;
- the executive director and their deputies;
- the members of the directorate;
- the chief accountant and their deputy;
- the chief and members of the internal audit;
- a dealer who is a decision-maker;
- compliance officers; and
- branch managers and the chief accountant of a branch.

The managers of the bank must be qualified and must meet the standards of professional compliance defined by the applicable law. The process



of such qualification is prescribed by Regulation 1.

Generally, managers can become qualified by passing the exam. The exam may be organised by the CBA or qualifying organisations.

The CBA organises the exams for:

- executive directors (chairman of the directorate) and the chief manager of a foreign bank's branch;
- executive directors' deputies;
- banks' directorate members;
- heads of the internal audit; and
- chief accountants.

It is important to note that the grounds for the organisation of exams by the CBA is a request of the relevant bank or foreign bank's branch following the appointment of a person to a position. The remaining managers must pass an exam which is organised by a qualifying organisation. The CBA's qualification certificate is issued when an exam is passed.

The board member qualification check is provided not through the exam but through a personal interview with the CBA.

The CBA recognises similar past experience of a candidate in a reputable international organisation and will make an exception with regard to passing the exam for such a candidate. There are a few other cases stipulated under Regulation 1 where the exams are replaced by the procedure of confirmation of qualification through other tools.

## Registration

The CBA registers the managers to whom the requirements of a qualification certificate or checking are applicable, except for dealers.

The registration of the board member follows the qualification interview in the CBA. The CBA shall be notified of an appointment of a chairperson and their deputy.

The managers other than board members are registered based on the relevant pleading of a bank and successfully passing of the registration process. The registration process for an executive director and their deputies, members of directorate, a chief accountant and their deputy and a chief of internal audit is sophisticated, which means that the CBA performs compliance assessments and requires a personal interview of each candidate.

## 4.3 Remuneration Requirements

The regulation adopted under Armenian legislation regarding remuneration is that the CBA may limit a bank's payment of bonuses and other incentive payments in the following cases:

- the payment leads or may lead to the decline of the bank's financial state; or
- there have been bank payment breaches or potential breaches of at least one prudential standard or maximum/minimum threshold of prudential norms.

## 5. AML/KYC

### 5.1 AML and CFT Requirements

The main statutory regulations on AML and CFT for banks is the law on Combating Money Laundering and Terrorist Financing. Banks also follow

recommendations established by the CBA and relevant international institutions.

The banks are obliged to have internal acts regarding AML and CFT, such as policies, risk assessment regulations, and KYC processes.

The banks are obliged to:

- provide customers due diligence, both in the phase of establishment of a business relationship and during the provision of services;
- provide due diligence of the transaction and business relationship;
- report on transactions subject to mandatory reporting and suspicious transactions;
- reject or cease the transaction or establishment of a business relationship should there be no feasible way to achieve the KYC process requirements or to exclude the doubts over the transactions, or if the regulator requests it; and
- freeze the assets directly or indirectly owned or controlled by persons related to terrorism or the proliferation of weapons of mass destruction.

If the transaction is suspicious, a bank may suspend it and report it to the regulator, and it must then act as per the instructions of the regulator.

The transactions subject to mandatory reporting for banks are:

- wire-transactions in an amount equal to or above AMD20 million; and
- transactions using cash (money) in amount equal to or above AMD5 million.

Transactions or business relationships, including attempted ones, are suspicious if it is suspected,

or there are reasonable grounds to suspect, that the property:

- is the proceeds of criminal activity;
- is related to terrorism, terrorist acts, terrorist organisations, or individual terrorists, or to those who finance terrorism; or
- was used in or is intended to be used for terrorism or by terrorist organisations or individual terrorists, or by those who finance terrorism.

## 6. Depositor Protection

### 6.1 Depositor Protection Regime Administrator and Funding

The Deposit Guarantee Fund of Armenia (the “Fund”) is a non-commercial legal entity established by the CBA to which all banks must pay regular (calculated based on total attracted deposits and payment is made quarterly), non-regular (for newly-established banks) and extra (upon decision of the Fund in case of insufficiency of funds) contributions.

The Fund is responsible for management of funds, as well as payment of compensation where there is a “compensation event”.

#### Covered Deposits

The guarantee of deposit compensation covers deposits within the following limits:

- AMD16 million if a depositor keeps only an Armenian dram-denominated deposit in the insolvent or bankrupt bank;
- AMD7 million if a depositor keeps only a foreign currency-denominated deposit in the insolvent or bankrupt bank;
- AMD16 million for deposit in Armenian drams if a depositor keeps Armenian dram- and

foreign currency-denominated deposits in the insolvent or bankrupt bank, and the dram-denominated deposit exceeds AMD7 million; and

- all amounts of deposits in Armenian dram in an amount equal to the difference between AMD7 million and the reimbursed deposit in drams if a depositor keeps Armenian dram- and foreign currency-denominated deposits in the insolvent or bankrupt bank, and the size of dram-denominated deposit is less than AMD7 million.

In the following cases, the guarantee on compensation is not provided:

- a depositor is a manager of the bank or their family member;
- a depositor is a significant shareholder of the bank or their family member;
- a depositor disclaimed their ownership rights;
- funds in the deposit are recognised as proceeds of illegal activities, unless otherwise proved by a depositor; and
- the interest rate on the deposit is at least 1.5 times higher than the interest rate on similar bank deposits indicated in the public offer of the bank.

It is important to note that the deposit, within the meaning of its guaranteed compensation, refers to:

- funds provided by or for a depositor that must be returned or repaid to a depositor;
- a fund in any type of bank account belonging to a person;
- a fund attracted by a bank through allocation of its securities; and
- interest accrued to the funds listed above.

## Compensation

A compensation event occurs when:

- a bank is recognised as insolvent and, according to decision of the CBA, it is not able to pay back deposits within the period set by law and contracts; or
- a bank is recognised bankrupt.

The CBA notifies the Fund about the compensation event, as well as providing the list of deposits subject to compensation. The Fund provides public notice regarding compensation and pays compensation should the depositor apply for it within three years of that public announcement.

## 7. Bank Secrecy

### 7.1 Bank Secrecy Requirements

Bank secrecy is the information belonging to a customer of which a bank becomes aware while establishing or carrying on a business relationship with its customer, such as customer account information, information on the transactions made upon the instruction of the customer or in favour of the customer, trade secrets, facts related to any project or plans of its activity, inventions, industrial designs, and other information that the customer intended to keep secret where the bank is aware or could have been aware of this intention.

The information that becomes known to the CBA in connection with or during the supervision of banks also becomes classified as bank secrecy; the CBA is deemed as a bank and the banks are the customer.

The general rule is that disclosure of bank secrecy is prohibited. The breach of this rule may incur criminal liability. However, there are certain cas-

es prescribed under the law when the disclosure of bank secrecy is allowed, some of which are subject to some conditions. Those cases are the following.

- A customer discloses information about themselves.
- A bank provides information to the CBA (or to the Fund) while it exercises its supervision powers.
- A bank provides information about a certain customer upon the latter's consent.
- A bank provides information to companies providing services or carrying out certain activities for the bank if:
  - (a) that information is necessary for rendering those services or performing those activities; and
  - (b) the receiver guarantees the relevant protection of the bank secrecy,
- A bank needs to disclose information about a certain customer before the court with the aim of protecting its interests while undergoing the dispute with that customer.
- A bank provides the information to the courts, or tax and customer authorities and law enforcement, based on a court order.
- A bank provides data to the Financial System Mediator regarding the customer who initiated the examination of that mediator.
- A bank provides information about certain customers to the heirs of that customer should they submit the documents verifying the succession.
- A bank provides information about a certain deceased customer to a public notary should the notary inquire as to the assets of the deceased person.
- A bank provides information to the credit bureaus.
- The exchange of information between banks.

- Reporting to law enforcement should there be doubt as to an attempt or commission of a crime.
- A bank provides information in response to the committee of corruption prevention.

The violation of bank secrecy rules may lead to the civil liability (compensation of damages), administrative penalties (from AMD2-10 million), and criminal liability.

## 8. Prudential Regime

### 8.1 Capital, Liquidity and Related Risk Control Requirements

#### Basel III implementation

The Basel III standards on counter-cyclical capital buffer were implemented in the procedure on Setting and Calculation Thresholds above the Capital Adequate Ratio of Banks, which was adopted by the CBA on 1 April 2019.

#### Risk Management Rules

Risk management in banks is regulated under the CBA's Regulation on Minimum Conditions of Performing Internal Control in Banks. The CBA has also given recommendations regarding management of banks' operational and liquidity risks.

The bank's risk management system must at least consist of the following:

- it has adopted a strategy on risk management;
- an approved risk appetite;
- it has adopted policies on management for each risk separately, including, for instance, the acceptable limits of risks per type and applicable schemes on mitigation of risks;



- it has implemented processes and tools for recognition, assessment, control, monitoring and accountability of risks per type (at least for credit, market liquidity, operation, reputation and strategy (business model) risks);
- it has implemented obligations and liabilities of bank units and employees regarding risk management; and
- it has adopted a policy on internal processes of assessment of the bank's capital which, for instance, include the proceedings in relation to assessment, collection and checking of information.

Banks are required to implement stress testing for the following risks at least:

- credit risk quarterly;
- exchange risk monthly in the right of upcoming year perspectives;
- interest risk quarterly;
- price risk quarterly;
- liquidity risk monthly in view of upcoming year perspectives; and
- pandemic risk (possible negative impact of other bank/financial institutions' financial issues on the bank) quarterly.

The CBA recommendation stipulates that the operation risk management of a bank relies on the following principles:

- a bank's board must be aware of the operational risks of bank, and must adopt and periodically review the plan and strategy of operational risk management;
- a bank's board must be assured that the internal audit fully and efficiently checks the processes of operational risk management, and the internal audit must be independent and qualified;

- an executive governance body is responsible for the implementation of the operational risk management plan adopted by the bank;
- a bank must find out and assess operational risks within its main tools, operations, processes, and systems;
- a bank must implement processes for the periodic monitoring of operational risks and losses in connection therewith;
- a bank must have policies and processes on management and mitigation of essential operational risks;
- a bank must adopt a plan of action for emergency cases; and
- a bank must disclose enough to allow the other participants in the market to assess the approach of a bank with regard to operational risk management.

The CBA's recommendations on liquidity risk management defines 20 principles, including that a bank must implement a strategy for the daily management of liquidity.

## Capital Requirements

The minimum statutory capital of a bank is AMD50 million, which may be paid only in Armenian drams. The minimum total capital required for a bank is AMD30 billion. The total capital is the sum of core capital and additional capital; however, the amount of core capital in this sum must not be more than 30% of the total capital. The core capital consists of a total sum of specified amounts (eg, statutory capital, non-distributed dividends, reserve funds) including specified expenses or property valuation (eg, buy-back shares).

The ratio of the core capital to risk weighted assets must be 9%, while the ratio of the total capital to amount of risk weighted assets is 12%.

The counter-cyclical capital buffer rate is 0%. The capital conservation threshold rate for 2022 is 1.5%; for 2023 it will be 2% and it will become 2.5% in 2024.

## Liquidity Capital

The general rate of liquidity is 15%. The current rate of liquidity is 60%. The standard of liquidity cover is 100%. The pure financial standard is 100%. The standards may differ depending on the asset classification or currency involved in calculation.

## Additional Requirements Applicable to Systematically Important Banks

For systemically important banks, the threshold is at the rate of 1% for 2022 and will become 1.5% as of 2023.

## 9. Insolvency, Recovery and Resolution

### 9.1 Legal and Regulatory Framework Insolvency, Recovery and Bankruptcy

The deterioration of the financial state of a bank may cause either recognition of its insolvency or bankruptcy.

The CBA recognises a bank as insolvent if one of the following apply:

- a bank consumed 50% or more of its total core capital;
- a bank is not capable of making repayments upon legal requests from its creditors;
- the summary assessment of bank performance is lower than the summary assessment of bank performance required by the CBA; or
- a bank periodically breaches prudential standards on reservation.

While recognising a bank as insolvent, the CBA may exercise one of the following rights:

- it may appoint a head of temporary administration and mortgage manager for up to one year, with the possibility of prolonging the term for one more year; or
- it may apply to the court to declare the bankruptcy of a bank.

The aim of appointing a head of temporary administration is to restore the financial stability of the bank, which the temporary administration performs through various tools, such as the reorganisation of the bank, selling the bank's assets, short-term collection of bank assets, and attraction of new investments. A head of temporary administration becomes and acts in the capacity of the executive director of an insolvent bank.

During administration, the participator (shareholders) of the bank cannot exercise their rights arising from such participation, for example to separate their part (deposit) of the authorised capital of the bank or to separate the shares of the participator (shareholder, unit holder) in the authorised capital of the bank.

The administration shall operate according to the financial recovery plan adopted by the CBA. The CBA may freeze the satisfaction of claims of creditors of the bank (moratorium) for the entire period of activities of the administration (or, where necessary, for a shorter period). The administration has the right to unilaterally terminate the agreements or apply to court to invalidate them.

The CBA must terminate the activities of the administration where:

- goals envisaged in the financial recovery plan have been achieved and the CBA decides thereon; or
- the court recognises the bankruptcy of the bank and appoints a liquidator.

Recognising the insolvency of a bank, or when the CBA concludes that bankruptcy will be a more effective tool to keep the bank's assets rather than to continue its administration, the CBA may apply to the bankruptcy court for bankruptcy of a bank. The creditors of the bank may petition the CBA to apply for bankruptcy. Before applying to the court for bankruptcy, the CBA revokes the bank's licence. The bank will become bankrupt where the court decides this. Upon the decision of a court on a bank's bankruptcy, the liquidation of the bank will follow.

## Liquidation of a Bankrupt Bank

When the bank is recognised as bankrupt, the appointed liquidation administrator is appointed by the court. From the notification of a bank's bankruptcy administrator, creditors may register their claims against the bank. The sequence of satisfaction of claims of creditors is as follows:

- payment of debts secured by pledge;
- claims arising from the insurance contracts from the assets equal to technical funds;
- administrative expenses;
- claims of creditors who provide loans or deposits to a bank after the appointment of administration;
- the deposits of natural persons in amounts of AMD16 million for dram-denominated deposits and AMD7 million for foreign exchange-denominated deposits (to the depositor or the Fund should the deposit amount be compensated by it);
- the other obligations of the bank, including to repay the amount of deposits remaining

- after repayment of AMD16 million for Armenian dram-denominated deposits and AMD7 million for foreign exchange-denominated deposits;
- debts to the state and municipality budget;
- subordinated loans; and
- claims of the bank's shareholders.

## 10. Horizon Scanning

### 10.1 Regulatory Developments

Companies (legal entities) may be subject to criminal liability from January 2023; this will include banks as well.

Examples of financial crime for which a company may be charged are:

- improper use of inside information;
- money laundering;
- deliberately false advertising;
- taking or giving bribes;
- illegal disclosure of bank secrecy; and
- anti-competitive activities.

For a legal entity, commission of a crime may lead to criminal liabilities, such as payment of fine, temporary suspension of the right of performing certain activities, compulsory liquidation or prohibition of doing business in Armenia.

As at December 2022, the succession of criminal liability is not regulated under the Criminal Code.

The legal entity may avoid criminal liability should its shareholders take reasonably necessary measures to prevent crime from being committed by persons who may have influence over the legal entity's activities or decisions.

The concept of criminal liability of a company is a new one for the Armenian legal system, and it is rather difficult to assess its possible impact on the market in general or specifically on the financial market. Nonetheless, the change is expected to cause positive changes in the market rather than negative ones.

## 11. ESG

### 11.1 ESG Requirements

Banking regulatory rules do not address ESG matters. However, Armenian banks may address ESG matters under their policies and other internal regulations, and some of them currently practise this, at least in relation to the environment. A bank may include ESG-related clauses in a loan agreement with creditors where it is required under the contract of attracting funds for those loans, in which case environmental and governance considerations are usually addressed.



Contributed by: **Narine Beglaryan** and **Lianna Sahakyan**, **Concern-Dialog Law Firm**

**Concern-Dialog Law Firm** is a Yerevan-based full-service law firm established in 1998. The firm provides services in litigation, representation, and legal advising. In addition to corporate and business law (the common specialisation for most of the ranked firms in Armenia), which includes M&A transactions, the firm also specialises in banking and capital markets, data protection, private clients, and employment law. The firm has 70 employees, of which 16 are licensed attorneys. Concern Dialog is a

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