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\_\_\_\_\_ **Fikrat Mammadov**

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Chairman of Management Board

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**GUIDELINES ON FORCED LIQUIDATION OF BANKS AND LOCAL  
BRANCHES OF FOREIGN BANKS**

**(with amendments of 15.04.2010)**

**Baku-2006**

## 1. General Provisions

1.1. These Guidelines have been developed in accordance with the Civil Code of the Republic of Azerbaijan, the Laws of the Republic of Azerbaijan on the Central Bank of the Republic of Azerbaijan and on Banks, and defines rules of forced liquidation of banks and local branches of foreign banks (hereinafter – banks).

1.2. These Guidelines shall not apply to banks which are voluntarily liquidated and declared bankrupt.

## 2. Definitions

Definitions used herein shall have the following meanings:

**Provisional administrator** – person in charge of provisional management assigned to the problem bank by the Central Bank under the legislation of the Republic of Azerbaijan.

**Liquidator** – person designated by a court based upon an application of the Central Bank on bank's forced liquidation and authorized to manage the bank during the liquidation process in order to finalize settlements with creditors of the liquidated bank.

**Creditor of the bank** – person who has claims against the liquidated bank on its liabilities.

**Interim liquidation balance** – report approved by a court, reflecting data on property of the liquidated bank, the list of claims by creditors and review results of these claims.

**Liquidation balance** – report developed and approved by a court upon completion of settlements with creditors.

## 3. Grounds for bank's forced liquidation

3.1. The bank, the license of which is provoked on one or more of the following grounds shall be liquidated mandatorily in the event:

3.1.1. data, submitted when applying for a bank license are revealed to be false;

3.1.2. the bank does not start functioning under the license within twelve months from the date the bank license's enactment, or the Central Bank reveals that the bank has not attracted deposits or other repayable funds, or granted loans within six months;

3.1.3. size of the bank's authorized or aggregate capital falls below the minimum required amount of the authorized or aggregate capital (of funds similar to the aggregate capital of a foreign bank's local branch) set by the Central Bank for banks;

3.1.4. the bank fails to secure assets entrusted to it;

3.1.5. the bank fails to carry out management or current activities reliably or prudentially, or breaches requirements of the Law of the Republic of Azerbaijan on Banks, and acts of the Central Bank of legal nature more than twice;

3.1.6. the bank engages in activities not implied in the banking license or permit;

3.1.7. the bank becomes a subsidiary of another bank without the Central Bank's permission;

3.1.8. the license of a foreign bank or a foreign bank holding company with a local subsidiary bank or branch is provoked;

3.1.9. the bank is reorganized without the Central Bank's permission;

3.1.10. the Central Bank fails to supervise subsidiaries of a foreign bank, a foreign bank holding company and a member bank of a group of companies due to insufficient

supervision by host country's banking regulatory and supervisory authority;

3.1.11. it is revealed that bank submitted deliberately erroneous statements and data to the Central Bank deliberately;

3.1.12. the bank did not submit monthly reports to the Central Bank as of the last three reporting dates;

3.1.13. the bank does not implement decrees or other written Guidelines set by the Central Bank under the Law of the Republic of Azerbaijan on Banks, and acts of the Central Bank of legal nature;

3.1.14. there are facts proving that the influence of one or more founders with qualifying holdings on the bank may endanger the bank's reliable and prudential regulation;

3.1.15. relationships between the bank and the foreign bank or the foreign bank holding company with qualifying holdings hinder the Central Bank to implement its supervisory functions, and banking regulatory and supervisory authorities of that foreign country do not cooperate with the Central Bank;

3.1.16. individuals and heads of executive bodies of legal entities with qualifying holdings are not fit and proper persons;

3.1.17. bank's administrators do not meet relevant requirements of the Law of the Republic of Azerbaijan on Banks;

3.1.18. the bank or the foreign bank's local branch does not have adequate internal management and control procedures in place;

3.1.19. the bank does not function in accordance with its business-plan and does not ensure financial forecasts.

#### **4. Assignment and composition of liquidators**

4.1. The Central Bank shall nominate one or more individuals and/or legal entities to a court to be endorsed as a liquidator depending on the size and nature of the work to be done in the mandatorily liquidated bank, and on the number of subsidiaries, branches, departments and representative offices of the bank.

4.2. The liquidator(s) shall be appointed to this position with their consent.

4.3. The following persons are not eligible to this position:

4.3.1. related parties and parties acting on behalf of related parties;

4.3.2. Creditors and borrowers of the bank except for the Central Bank;

4.4. Salary payment terms and conditions of liquidators shall be defined by court on the basis of the Central Bank's proposal.

4.5. In the event liquidators are appointed from among the Central Bank employees they shall be released from implementing job responsibilities in the permanent place of employment during liquidation. Their positions, salaries on permanent place of employment and other payments shall be maintained.

#### **5. Goal of bank's forced liquidation and liquidator's authorities**

5.1. The primary goal of bank's forced liquidation is to meet claims of liquidated bank's creditors in a short period of time.

5.2. From the time a court decision on bank's forced liquidation or on assignment of a liquidator takes effect until the end of bank's liquidation:

5.2.1. all authorities of the general meeting of bank's shareholders, other management bodies and officials on bank's management, including the right to dispose

payment of properties and liabilities shall be transferred to the liquidator;

5.2.2. bank administrators' or shareholders' actions in the name of the bank shall have no legal effect;

5.2.3. all liens on assets in order to protect bank assets and enforce court decisions shall lose their validity;

5.2.4. all assets except for liabilities provided by the bank in the amount of collateral (mortgage) shall be protected from lien or proceeding.

## **6. Duties of liquidators**

6.1. During the forced liquidation of the bank the liquidator(s) shall:

6.1.1. receive bank's assets, including all of its property and documents through an acceptance act approved by court;

6.1.2. control bank's assets and liabilities;

6.1.3. manage bank's activities;

6.1.4. set the order and the period of submission of creditors' claims to the bank;

6.1.5. dispose liquidation accounts;

6.1.6. compile reports reflecting the liquidation process;

6.1.7. appraise bank's property under the legislation and, if necessary, involve relevant specialists;

6.1.8. publish information in the mass media on bank's forced liquidation;

6.1.9. send a relevant notification to bank's Supervisory and Management Boards on commencement of bank's forced liquidation and assignment of the liquidator;

6.1.10. place a written notice on commencement of bank's forced liquidation and assignment of a liquidator in customer servicing places;

6.1.11. add the words "in the process of liquidation" to the name of the bank and change bank's stamp;

6.1.12. open liquidation accounts with and report to the Central Bank of the Republic of Azerbaijan;

6.1.13. take measures to maintain bank's documents and property, as well as other property he/she received as collateral (mortgage);

6.1.14. take measures to detect bank's creditors and get receivables;

6.1.15. compile an interim liquidation balance sheet of the mandatorily liquidated bank, a report on implementation of liquidation measures and liabilities, as well as a liquidation balance and submit them to court for approval within time period defined by court;

6.1.16. In the event abuse and other breaches of the law are revealed during the liquidation process notify law-enforcement bodies and the Central Bank;

6.1.17. in all cases of substitution with another liquidator hand over accounting and reporting documents and assets of the bank at his/her disposal, as well as accounting and reporting documents on the bank, prepared by the liquidator during the liquidation process to a new liquidator on the basis of the acceptance act;

6.1.18. not disclose confidential information he/she becomes aware when discharging his/her authorities;

6.1.19. report to court on implementation of liquidation measures and liabilities in periods set by court;

6.1.20. finalize the work of the mandatorily liquidated bank and settlements with creditors;

6.1.21. discharge other authorities not contradicting to the legislation of the Republic of Azerbaijan and these Guidelines.

6.2. Liquidators shall function under court control and in close mutual relationship with the Central Bank.

## **7. Commencement of liquidator's activity**

7.1. The liquidator implementing bank's forced liquidation shall function in accordance with the laws of the Republic of Azerbaijan, acts of the Central Bank of the Republic of Azerbaijan of legal nature, other normative acts of legal nature of the Republic of Azerbaijan and these Guidelines.

7.2. The liquidator operating outside the Republic of Azerbaijan shall during its activity be guided by both the legislation of the Republic of Azerbaijan and the legislation of the country, the structural unit of the liquidated bank operates in. For this purpose (as well as during forced liquidation of local branches of foreign banks) the liquidator shall cooperate with the banking regulatory and supervisory authority of the country that has mutual representation.

7.3. The liquidator shall publish information on bank's liquidation and the order and the period of notifying creditors' claims in the print media, where the information on state registration of the liquidated bank was published. The period allotted for creditors to apply to the mandatorily liquidated bank to have claims met shall not be less than two months from the date the information on bank's liquidation is published.

7.4. The liquidator shall take measures to identify creditors and collect accounts receivables, and send a notification on bank's liquidation to its creditors.

7.5. The liquidator shall compile a registry of creditors' claims with a view to meet their claims and interests. The registry of creditors' claims shall contain information on each creditor, the amount of claims on his/her monetary obligations and/or obligatory payments, and the sequence of meeting each claim.

7.6. The liquidator shall compile an interim liquidation balance upon the end of the period within which creditors put forward their claims. The balance sheet shall keep information on composition of the property of the liquidated bank, the list of creditors' claims, and review findings of these claims.

7.7. The registry of creditors' claims shall include claims reflected in reports and indisputable claims applied. Execution documents on effective court decisions against the liquidated bank shall be deemed creditors' approved claims and registered.

7.8. The liquidator shall open special liquidation (in national and foreign currency) accounts with the Central Bank within 2 (two) business days from the day he/she commences the work. All receipts from the disposal of bank's funds and assets shall be transferred to these accounts respectively.

## **8. Stages of liquidation process**

8.1. Bank's forced liquidation shall cover the following stages:

8.1.1. take control over bank's premises and documents;

8.1.2. inventorize assets and liabilities;

8.1.3. evaluate and sell assets;

8.1.4. meet creditors' claims.

## **9. Control over bank's premises and documents**

9.1. The liquidator shall take physical control over bank's premises and documents by using the security service, police and other possible means available upon familiarizing bank administrators with the court decision on the liquidation.

9.2. The liquidator shall also change all locks and codes of the bank and its structural units, and security, in order to control bank's documents and property.

9.3. The liquidator shall hold a meeting with the bank employees so as to eliminate uncertainties regarding bank's various spheres. Rules of conduct shall be observed and issues studied on their essence during the meeting.

9.4. The liquidator shall designate an employee to answer phone calls of customers and other creditors.

## **10. Inventorization of assets and liabilities**

10.1. The liquidator shall inventorize mandatorily liquidated bank's assets and liabilities and compile an act according to the examination result.

10.2. Assets of the liquidated bank shall include cash funds, debts to individuals and legal entities, property and other exposure of the bank.

10.3. All cash funds shall be calculated within the inspection of bank's assets. Funds in the national and foreign currency, including metal coins shall be placed separately. All non-cash funds shall be disaggregated and indicated in the act. A report on the outstanding amount of cash funds shall be prepared thereafter and signed by two persons in charge (one of them shall be the liquidator, the other one a person designated by him/her) date being included.

10.4. The liquidator shall collect loan agreements and credit files within the review of loans. Immature loan agreements and their repayment prospects shall be analyzed from the date the court decision on forced liquidation of the bank takes effect. Outstanding balance of loans shall be reconciled with bank's balance indicators. In case of any discrepancies, reasons shall be investigated.

10.5. All loan documents, including agreements on loans and other debts shall be reconciled with accounting-registry documents after being listed. In the absence of documents or if discrepancies are revealed, a relevant act shall be compiled reasons being enumerated.

10.6. In the event the bank issued plastic cards, a notification on termination of the transactions through plastic cards shall be sent to the processing company (ies) of which the bank is a member. The liquidator shall also take measures to collect credit cards from both individuals and corporate customers.

10.7. Loan repayments shall be kept under the liquidator's control.

10.8. The registry of acquired securities shall be taken under control, they shall be listed and measures shall be taken to realize them.

10.9. The liquidator shall identify whether the property is in bank's ownership or rented. A list of all rented property shall be prepared and copies of all rent agreements, acts and the assessment taken. The necessity of the property at and out of bank's disposal for the bank shall be identified. Agreements on rented property not used in banking shall be annulled in accordance with the legislation.

10.10. Liabilities of the mandatorily liquidated bank shall be reconciled with bank's documents and divided into categories on repayment sequence. Any discrepancy revealed shall be documented.

10.11. Assets that were not in the bank's balance sheet prior to commencement of the liquidation process and detected during inventorization shall be reflected in the interim liquidation balance of the liquidated bank.

## **11. Evaluation and sale of assets**

11.1. The liquidator shall ensure evaluation of assets in order to sell bank's assets and settle bank's liabilities.

11.2. When evaluating bank's assets financial and non-financial assets shall be differentiated.

11.3. Financial assets shall include:

cash funds;

securities;

loans;

currency valuables.

11.4. Non-financial assets shall include:

premises;

vehicles;

furniture, equipment and other properties.

11.5. Banknotes and metal coins in the national and foreign currency, and financial assets in the form of a correspondent bank account shall be evaluated nominally.

11.6. Securities shall be evaluated depending on the status of the securities market.

11.7. Sale of assets shall be implemented fairly.

11.8. Loans classified as "standard" shall be disposed of at a market value.

11.9. The following principles shall be observed when selling bad loans:

11.9.1. loans shall be sold at the outstanding debt (principal amount and interests) value;

11.9.2. if not sold to another buyer, the debt may be sold to the customer himself/herself at a price lower than the nominal value. The liquidator shall substantiate each of such cases in the liquidation report;

11.9.3. In the event sale of bad loans fails, the liquidator shall take measures to sell the collateral (mortgage) property in accordance with the legislation.

11.10. Non-financial assets shall be evaluated in accordance with the legislation.

11.11. In the event other debtors of the mandatorily liquidated bank fail to implement their obligations before the bank the liquidator shall start procedures of channelling the deduction to collateral (mortgage) under the legislation.

11.12. In the event the liquidated bank's funds are not sufficient to meet creditors' claims the liquidator shall sell bank's property in a public auction.

11.13. The initial price of non-financial assets on sale may change. If assets are sold at a price much lower than the calculated value the liquidator shall document reasons and include them in the report.

## **12. Review creditors' claims**

12.1. Creditors of the liquidated bank shall issue an application to the liquidator in order to have their claims met. The application shall be attached with documents confirming the claims.

12.2. The application shall be reviewed within 15 (fifteen) days upon submission.

12.3. When reviewing the application, the liquidator shall verify whether the claim

is legal and substantiated. If the application is not attached with relevant documents, the liquidator shall require from the creditor to submit them within 5 (five) business days. If the documents are not submitted within this period on various grounds (if lost, stolen, or destroyed for other reasons) the liquidator shall review the application based on the information available in the bank.

12.4. Upon reviewing creditors' claims, the liquidator shall inform them on results in writing. The information shall include:

12.4.1. full names and postal requisites of the creditor and liquidator, and the date and number of the responded application;

12.4.2. if the claim in the application is approved fully or in part – the approved amount and its due date;

12.4.3. if the claim in the application is rejected fully or in part – reasons to reject;

12.4.4. list of documents attached with the information.

12.5. In the event creditors' claims are rejected attached documents shall be returned to the applicant.

12.6. An interim liquidation balance shall be compiled no later than 30 (thirty) days upon the end of the period for receiving claims, given inventorization results of assets and liabilities.

12.7. An interim liquidation balance of the bank with a subordinated structure shall be compiled taking those units' interim liquidation balances into account.

12.8. If the applied creditor is at the same time the debtor of the bank, the liquidator(s), when considering the claim (the application), shall review offsetting of mutual claims according to the documents submitted until the approval of and inclusion of results to the interim liquidation balance.

### **13. Coverage of claims**

13.1. The liquidator of the bank shall repay funds to the liquidated bank's creditors in accordance with the Civil Code of the Republic of Azerbaijan in the following sequence, from the date the interim liquidation balance is approved by court:

13.1.1. creditors' claims on liabilities secured by collateralization (mortgage) of bank's property;

13.1.2. capitalized time limited payments, the bank is responsible to repay to individuals for damages to life and health;

13.1.3. claims for payment of unemployment benefits, salaries of persons employed with labor agreements, and fees according to copyright agreements;

13.1.4. debts on mandatory budget payments and mandatory public social insurance contributions to the off-budget state fund;

13.1.5. settlements with other creditors.

13.2. Claims on each turn shall be met after claims of the previous turn are completely met. When the time for creditor's claim to be provided nears, the creditor's claim may be ensured either in the monetary form of settlement and/or in the natural form of property upon his/her agreement.

13.3. If creditor's claims are rejected he/she shall be notified in writing. .

13.4. If creditor's claims are rejected to be met or reviewed, the creditor shall issue a claim to court against the liquidator until the liquidation balance is approved.

13.5. Creditor's claims issued upon completion of the period set by the bank's



liquidator shall be met from the bank's remainder property after timely issued claims are met.

13.6. The claim not put forward by the creditor, but to be met under court decision in the period defined by bank's liquidator shall be executed in a sequential order to settle with the creditor.

13.7. Creditor's claim shall be deemed to be met in the event:

13.7.1. the creditor does not lay claim to court on his/her unapproved claims until approval of the bank's liquidation balance;

13.7.2. creditor's claim is rejected under court decision.

13.8. The liquidator may address a petition to the Central Bank on sale of the bank or separate assets and liabilities in order to increase bank's value for its creditors.

13.9. When the creditor and liquidated bank have mutual liabilities, offsetting of claims shall be allowed in the event:

13.9.1. mature mutual liabilities exist;

13.9.2. the execution period of one of the liabilities is not expired, but the party entitled to this claim supports offsetting.

13.10. The cases when offsetting of claims is not allowed are defined under the Civil Code of the Republic of Azerbaijan

13.11. The following shall be observed during offsetting of claims:

13.11.1. no liability shall be pretentious;

13.11.2. offsetting shall be agreed in writing;

13.11.3. offsetting of liabilities in different currencies shall be conducted at the CBA official exchange rate as of the date.

13.12. As an exception, bank's debtor may be allowed to repay debts through liquid property. In this case an act on appraisal of the property by independent appraisors as of the date, to be delivered to the bank, shall be available and the value of property shall not fall below the total debt.

13.13. In the event the liquidator fails to implement his/her liabilities due to reasons depending on creditors (if the creditor could not be reached or if he/she does not come to the bank), he/she shall transfer the outstanding amount to the deposit account of the notary in accordance with the legislation upon completion of settlements on the relevant group of liabilities.

13.14. If not otherwise specified in the charter of the bank, the liquidator, upon completing settlements with his/her creditors, shall distribute the remainder property between bank's shareholders as defined in the legislation, provided that shareholders agree. The liquidator, upon completing settlements with creditors of the mandatorily liquidated bank, shall develop a liquidation balance and submit it to court to be approved whether an agreement is reached.

#### **14. Liquidator's cooperation with the Central Bank**

14.1. The liquidator shall operate in close cooperation with the Central Bank during bank's forced liquidation. The liquidator shall report to the Central Bank on his/her activity in the form and periods set by the Central Bank, and submit documents and information required by the Central Bank.

14.2. The liquidator shall address a substantiated petition to the Central Bank on commencement of a bankruptcy procedure about the bank if revealed any of the following when taking forced liquidation measures:

14.2.1. if the size of bank's aggregate capital falls below 25 (twenty five) percent of the minimum required level or if the adequacy ratio of the aggregate capital is less than 3 percent;

14.2.2. if the bank is not capable to cover its financial obligations when due;

14.2.3. if the bank is not capable to meet its financial obligations when creditors put forward claims.

### **15. Liquidator's relationship with judicial authorities**

15.1. The liquidator shall in line with these Guidelines cooperate with judicial authorities, represent the bank in court proceedings without a power of attorney and execute necessary procedural acts during bank's forced liquidation.

15.2. In cases not specified in regulations for application to judicial authorities and herein business principles with judicial authorities, and applications to court shall be regulated by the legislation of the Republic of Azerbaijan.

### **16. Completion of the forced liquidation procedure**

16.1. The liquidator shall be released from his/her duty under court decision upon completing bank's liquidation and submitting a relevant report to court. Bank's accounting and other documents shall be submitted to bank's shareholders or other management bodies, as well as, in accordance with the legislation, to the State Archive under court decision.

16.2. The court decision on completion of the forced liquidation procedure on the bank shall be sent to the authority maintaining state registration of legal entities.

### **17. Final provisions**

17.1. Issues not regulated by these Guidelines shall be resolved in accordance with the legislation of the Republic of Azerbaijan.

17.2. These Guidelines shall take effect from the date of state registration.