

## Legal Alert



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## New Rules for Banks Experiencing Financial Difficulties

On 7 April 2017, the President of the Republic of Azerbaijan signed a decree (the "**Decree**") approving significant amendments to the Law *On Banks* dated 16 January 2004 (the "**Amendments**") and relating to local banks experiencing financial difficulties.

### *Financial Rehabilitation*

The Amendments set a new process for the financial rehabilitation of distressed banks and establish new rules of conduct for temporary administrators. According to the Amendments, in the following cases the Chamber on Supervision of Financial Markets of the Republic of Azerbaijan (the "**FMSC**") should appoint a temporary administrator to a distressed bank:

- if the aggregate capital of the bank falls to 25 per cent or less of the minimum aggregate capital established for banks, or its adequacy ratio falls to three per cent or less;
- if the bank cannot perform its payment obligations as they become due or does not have sufficient liquidity at the moment of performance of obligations; and
- if the bank's license must be revoked on the grounds specified in the Banking Law.

The temporary administrator is to manage the distressed bank for nine months (which may be prolonged for an additional three months) and should achieve the following:

- 1) have the distressed bank accede to another (so-called "healthy") bank;
- 2) have the distressed bank sell its assets and liabilities in whole or in part to another bank;
- 3) found a bridge bank owned by the state, have the assets and liabilities of the distressed bank transferred to the bridge bank and subsequently sell the bridge bank to investors;
- 4) sell the distressed bank to investors; or
- 5) liquidate the distressed bank.

Different financial rehabilitation rules apply to banks of systemic significance (the requirements and standards for banks of systemic significance are yet to be prepared by the FMSC).

### *Voluntary debt restructuring*

The Amendments introduced a new section on voluntary restructuring of banks. Thus, if a bank is not able to fulfil its outstanding obligations at the demand of creditors or anticipates this will occur because it does not have funds to do so, or is short of funds, or is not able to use its funds for some reason, the supervisory board of the bank may adopt a decision on voluntary restructuring of the obligations.

In the above case, the bank must conclude a written agreement with the FMSC and thereafter prepare a restructuring plan.

### *Deposit Insurance Fund*

The Amendments established that upon a court's declaration of a bank's insolvency or compulsory liquidation, the Azerbaijan Deposit Insurance Fund must be appointed as liquidator of the bank. The Deposit Insurance Fund may assign its functions to other natural or legal persons, but bears responsibility before the bank's creditors.

### *Liability of administrators and significant shareholders*

In the event of state participation in the financial rehabilitation of banks of systemic significance, the temporary administrator can investigate losses caused by the actions of bank administrators (management and supervisory board members, heads of branches, etc.) and significant shareholders and seek monetary compensation from them. Decisions and transactions relating to, *inter alia*, sale, encumbrance or misappropriation of capital assets of the distressed bank or suspicious financing are listed in the Amendments as illegal actions triggering such compensation.

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