



TECHNICAL ASSISTANCE REPORT

REPUBLIC OF MOLDOVA

Design Considerations for a New Bank
Liquidation Framework

September 2023

Prepared By

Joao Marques (MCM); Mario Tamez (LEG); and Marco Bodellini (LEG Expert)

**Monetary and Capital Markets
Department and Legal Department**

DISCLAIMER

The contents of this report constitute technical advice provided by the staff of the International Monetary Fund (IMF) to the National Bank of Moldova (the “TA recipient”) in response to their request for technical assistance. This report (in whole or in part) or summaries thereof may be disclosed by the IMF to IMF Executive Directors and members of their staff, as well as to other agencies or instrumentalities of the TA recipient, and upon their request, to World Bank staff, and other technical assistance providers and donors with legitimate interest, unless the TA recipient specifically objects to such disclosure (see [Operational Guidelines for the Dissemination of Technical Assistance Information](#)). Publication or Disclosure of this report (in whole or in part) or summaries thereof to parties outside the IMF other than agencies or instrumentalities of the TA recipient, World Bank staff, other technical assistance providers and donors with legitimate interest, shall require the explicit consent of the TA recipient and the IMF’s Monetary and Capital Markets and Legal Department.

Contents

Page

Glossary	4
I. Introduction	9
II. The Role of Administrative Authorities in Bank Liquidation	11
III. Key Features of a Bank Liquidation Model	15
A. Triggers	15
B. Initiative to Trigger Liquidation	19
C. Transfer Powers	20
D. Liquidators	23
E. Legal Protection of the NBM	25
F. Timeframe for the Conclusion of Liquidation Procedures	26
G. Institutional Set-Up and Financial Stability Concerns	27
H. Other Issues	28
Table	
Key Recommendations	8

GLOSSARY

BRRL	Bank Recovery and Resolution Law
DGF	Deposit Guarantee Fund
FOLF	Failing or Likely to Fail
Fund/IMF	International Monetary Fund
FSB	Financial Stability Board
FSSR	Financial Sector Stability Review
FTE	Full-Time Equivalent
KA	FSB Key Attributes for Effective Resolution Regimes
KA Methodology	Methodology for the Banking Sector
LEG	Legal Department, IMF
MCM	Monetary and Capital Markets Department, IMF
NBM	National Bank of Moldova
NBM Law	Law on the National Bank of Moldova no. 548-XIII of July 1995
P&A	Purchase and Assumption Transaction
STX	Short-Term Expert
TA	Technical Assistance

PREFACE

At the request of the National Bank of Moldova (NBM), a Monetary and Capital Markets (MCM) Department and Legal Department (LEG) hybrid technical assistance (TA) mission visited Chisinau, Moldova, during November 28 to December 5, 2022, to assist the authorities in the design of a revised bank liquidation model. The mission was led by Mr. João Marques (MCM), who participated in person at meetings in Chisinau, and included Messrs. Mario Tamez (LEG) and Marco Bodellini (LEG STX), who participated remotely via videoconference in the mission.

The mission met with staff from the NBM, including Mr. Arcadie Albul, Vice-Governor; Mr. Ion Ropot, Head of the Bank Resolution Division; Ms. Maria Iovu, Head of the Bank Resolution Unit (within the Bank Resolution Division); Ms. Corina Turcan, Head of the Legislation and International Law Department; Ms. Svetlana Aghenie, Head of the Bank Legislation Division (within the Legislation and International Law Department); and Mr. Grigore Olaru and Ms. Silvia Marcu, Bank Liquidators). The mission wishes to thank the NBM and all their staff for their cooperation, productive discussions, and their hospitality.

EXECUTIVE SUMMARY

The 2021 FSSR recommended the revision of the liquidation legal framework. The Moldovan bank liquidation regime currently in force is purely administrative and under the NBM's control. The NBM considers that it is facing significant challenges -more than 50 legal actions were brought against 29 decisions of the NBM related to the liquidation of banks from 2016 to 2020-with the current bank liquidation framework, and indicates that it is not fit for purpose, and that it has been exposing the central bank to excessive risks. According to the NBM, the current framework is a drag on resources and may entail liabilities and reputational costs. The liquidation of the banks that failed in 2014 has faced challenges and implies a diversion of resources within the NBM. The FSSR mission recommended a revision of the current bank liquidation framework with a more active role by the courts as a way to mitigate the challenges faced by the NBM.

Regardless of the nature of the liquidation model, several reasons support the argument in favor of a key role to be played by an administrative authority like the NBM. These reasons primarily relate to maintaining financial stability, ensuring depositors' protection, and achieving value maximization. While these are reasons primarily associated with the failure of systemic or medium-sized banks, they could be relevant to a certain extent also for the liquidation of smaller institutions. Additionally, whereas some objectives like value maximization pertain more to corporate insolvency regimes, led by courts, depositor protection and continuity of critical services may be more relevant for bank liquidation. Financial stability comes into play because it is the overarching objective of administrative authorities.

Bank liquidation models in which administrative authorities retain substantive powers has been a preferred option for several countries. These models typically provide flexibility, efficiency, and control to administrative authorities and, therefore, when adequately designed and implemented, they could better protect financial stability and depositors. Acknowledging such benefits, the Fund has usually supported these models.

The design of a bank liquidation model needs to consider a wide number of key policy recommendations to be effective. Different bank liquidation models are used in jurisdictions around the world with varying degrees of success. Shifting to a different liquidation model, where responsibilities are given to an administrative authority and to the court, could be a viable model for the Moldovan authorities. Under such model, the administrative authority should retain significant powers. The present report addresses the following key issues: (i) triggers; (ii) initiative to initiate the liquidation process; (iii) transfer powers; (iv) liquidators; (v) legal protection of the NBM; and (vi) the NBM's role (institutional set-up and financial stability concerns).

Triggers for initiating the liquidation procedure should allow for timely intervention. Timely intervention is essential to avoid value destruction, harm to depositors and, thus, potential impacts on banking system stability, which could lead to a loss of confidence. On these grounds,

triggers should enable to start the procedure before an institution becomes balance-sheet insolvent. Furthermore, the triggers for liquidation should be aligned to the triggers for resolution. While currently liquidation is triggered by the withdrawal of the bank license the triggers for liquidation and resolution should be further aligned.

The initiation of liquidation should provide a clear and prominent role for the NBM. The NBM's control in the initiation of the liquidation process should be ensured. This could be achieved, for instance, by granting the NBM the exclusive power to file a petition with the competent court after it ascertains that the triggers for liquidation are met, or by requesting its consent before the formal initiation of liquidation, if creditors are allowed to apply to court for such an order.

It is of utmost importance that the legal framework includes the administrative powers for P&A transactions, whereby the deposits of the failing bank can be transferred to a willing buyer. Any gap between assets and liabilities should be financed by the DGF, subject to a least-cost test. A transfer of deposits and other liabilities offer significant advantages compared to a deposit payout, even for small banks, in terms of continuity of services and reduced costs (as the value of performing assets and collected deposits is better preserved in a P&A).

The selection and appointment of liquidators are critical to the success of the liquidation process. While the primary responsibility to control and oversee the Liquidator should be assigned the appointing authority -courts-; the NBM should participate in the relevant decisions and should be able to monitor the discharge of functions by the appointed liquidator, including having the power to propose their removal.

The legal protection framework is in line with best international practices, but it appears to be ignored. Legal protection aims also to mitigate the chilling effect that potential legal actions may have on the authorities while exercising their assigned powers. The NBM Law indicates that the NBM, its staff, and its agents shall not be held liable for their actions under the civil and administrative law when fulfilling their duties, except when adopted in bad faith. Nevertheless, the NBM staff indicated that this provision has been disregarded in practice and employees have been subject to legal procedures.

Non-observance of statutory deadlines could entail liability for the NBM. Liquidation is a lengthy process whose duration is beyond the involved authorities' control. Currently, legal provisions establish deadlines that could be used as legal grounds for the NBM to be sued by affected stakeholders in the event that such deadlines are not met, irrespective of whether the NBM was responsible for the outcome or not. Thus, the NBM should assess the potential liability risks and evaluate and design incentives that prevent liquidation from extending for too long (e.g., remuneration policies, liquidation plans and enhance transparency).

The institutional set-up should not be prone to conflicts of interest. Even in the event of the liquidation regime being turned into a hybrid model (with powers assigned both to the court and

the NBM), legal mechanisms should reduce potential conflicts of interest (e.g., Chinese walls, different reporting lines) resulting from the NBM being in charge of different functions.

Key recommendations are summarized in Table 1.

Table 1. Moldova: Key Recommendations

No.	Recommendations	Timeframe ¹
1.	Draft changes to the current regime where the NBM still maintains active participation, taking into account the current strengths of the corporate insolvency framework and the institutional capacity of the judicial system in dealing with bank failures. Paragraphs 15 to 18.	Near-Term
2.	Align liquidation and resolution triggers. Paragraph 25.	Near-Term
3.	Ensure that the NBM controls the initiation of the liquidation process (e.g., retains the exclusive power to petition the court to start formal liquidation procedures). Paragraphs 28 to 31.	Near-Term
4.	Include the administrative power to arrange and implement the sale of assets and liabilities if a buyer is available (P&A transaction), designed in the context of a coherent resolution and liquidation framework allowing the authorities to handle the failure of all banks in a quick and cost-effective manner. Such transaction should be financed by the DGF, subject to a least-cost test. Paragraphs 34 to 38.	Near-Term
5.	Draft amendments to the legal framework to establish that liquidators should be appointed by the court upon a proposal of the NBM based on clear criteria and allow legal persons to be eligible to be appointed as bank liquidators. The NBM should have a prominent role in monitoring the liquidator's actions. Paragraphs 42 to 45.	Near-Term
6.	Revisit the current internal administrative sanction framework for NBM officials. Paragraph 49.	Near-term
7.	Clarify the liability of the NBM and its staff when deadlines beyond the control of the authorities. Paragraph 51.	Near-Term
8.	Evaluate and design incentives that prevent liquidation from extending for too long (e.g., remuneration policies, liquidation plans and enhance transparency). Paragraph 52.	Near-Term

Near term: < 12 months; Medium term: 12 to 24 months.

I. INTRODUCTION

1. **The 2021 FSSR mission recommended to the Moldovan authorities that a new model for bank liquidation be devised and the law changed accordingly.**¹ The need for a new model result from the challenges the NBM has been facing for the last few years with the application of the current, fully administrative framework. However, any new model should strike a balance between the objectives of protecting creditors and promoting financial stability on the one hand, and the need to safeguard the discharge of the NBM’s other functions on the other. In addition, it should be recognized that bank liquidation is a complex responsibility, shaped by idiosyncratic features that expand to different areas, including commercial, administrative, labor, and tax laws. In addition, to fit its purpose, the liquidation framework should adequately consider the particularities of the legal and procedural traditions.
2. **According to the NBM, the current administrative bank liquidation model is not fit for purpose and it has been exposing the central bank to excessive risks.** Over the period of five years (2016–2020), more than 50 legal actions were brought against 29 decisions of the NBM related with the liquidation of banks, and the NBM states that this burden creates substantial reputational risks that can easily affect the effectiveness of the discharge of all other functions of the NBM.
3. **The 2021 FSSR mission assessed the arguments presented by the NBM and recommended a change in the current bank liquidation framework as a way to mitigate the challenges faced by the NBM.** According to the FSSR report, a “potential new model might entail a more active role by the courts but should include an administrative pre-judicial phase.”
4. **At the NBM’s request, the Fund has been providing TA.** The objective is to support the NBM in the assessment of the current arrangements for bank liquidation and to provide advice on potential revisions of key issues related with the bank liquidation framework. In particular, the Fund aims to inform the Moldovan authorities on key considerations for the design of the arrangements for bank liquidation and provide options to safeguard the bank liquidation objectives. This TA project was designed with three stages in mind. The first phase, already finished, was a preliminary desk review of the current bank liquidation law in Moldova (Desk Review), aimed at informing the subsequent steps of the TA. The second stage entails the identification of key reform modalities for Moldova, with concrete recommendations on policy options that address the concerns regarding the current framework. Building on the previous stage, after internal evaluation of the potential support to the NBM, a third stage could consist of assisting the NBM while drafting a new bank liquidation law on selected aspects of such law that are more central to the mandate of the NBM, which could help mitigate the most relevant vulnerabilities.

¹ See International Monetary Fund, Technical Assistance Report “Moldova, Financial Sector Stability Review,” October 2021.

5. The key features of the Moldovan bank liquidation framework are:

- i. The Moldovan bank liquidation regime currently in force is purely administrative, with a key role to be played by the NBM.
- ii. Banks whose resolution is not considered to be in the public interest may enter forced liquidation under the NBM's control. The bank is placed in forced liquidation by the NBM by withdrawing its banking license and appointing a liquidator (art. 38 1 of Law no. 550/1995 in conjunction with art. 58 and art. 60 of Law no. 232/2016).
- iii. The NBM oversees the entire liquidation process based on reports provided by the liquidator and carries out onsite inspections, if necessary (art. 38 6 and art. 38 12 of Law no. 550/1995).
- iv. The liquidator must submit for prior approval by the NBM the following decisions: (i) the sale or other forms of realization of any asset of the bank above MDL 1 million; (ii) reduction or cancellation of any claims whose validity is doubtful if they exceed MDL 200,000; and (iii) reimbursement of any claim ahead of the deadline prescribed by the law (art. 38 4 of Law no. 550/1995). Furthermore, the NBM is responsible for extending the liquidation period, if requested by the liquidator (art. 38 1 paragraph 7 of Law no. 550/1995). It is under this framework that the authorities have been dealing with the failure of four banks (one in 2009 and three in 2015), which are still undergoing liquidation procedures.

6. Against this framework, the TA mission provided the NBM with key design considerations and recommendations that could guide a comprehensive reform for a new bank liquidation regime. However, it is recognized that legal policy design is tailored to the idiosyncratic particularities of each regime and, therefore, the considerations and recommendations provided in the current TA should not be seen as advocating for a specific bank liquidation model, but rather as a reference that could inform the design of a new bank liquidation framework for Moldova. Moreover, it has been stressed that the NBM, while evaluating a liquidation regime, should carefully assess, among other factors, the current environment of the corporate insolvency framework and the Moldovan judicial system. Furthermore, this report focuses on key issues and does not aim to provide a detailed comprehensive analysis of all the particularities that liquidation entails. However, it is important to note that the design of an effective liquidation framework should include, in addition to the features described in this report, (i) the consequences of the opening of liquidation; (ii) the

treatment of pending contracts; (iii) accountability of bank owners and related parties, and (iv) the treatment of pre-insolvency transactions (the so-called avoidance rules).²

II. THE ROLE OF ADMINISTRATIVE AUTHORITIES IN BANK LIQUIDATION

7. Theoretically, there are three main high-level stylized models when establishing a bank liquidation framework.

- i. **Administrative model.** In such model, a public administrative authority, usually the resolution authority, would direct the liquidation procedure by performing the usual tasks of an insolvency administrator directly, or by appointing a liquidator who reports to the authority in charge. The authority, directly or indirectly, would also be responsible for recognizing and ranking claims of potential creditors, and later for distributing the proceeds of the realization of assets by the recognized creditors according to their rank. This model, if adequately designed and implemented, provides flexibility to protect depositors and preserve financial stability. Under this model, the actions undertaken by the administrative authority are subject to judicial review.
- ii. **Judicial model.** Under this model, court-supervised liquidation proceedings are established for all corporate entities. In such model, the court would hear the views of the institution's shareholders or creditors regarding whether liquidation may not be appropriate, and the court has the discretion to decide. The liquidator would be subject to the court's oversight and direction, while the administrative resolution authority would not provide direction to the liquidator. This model may entail a lengthy process over which the administrative authorities may not have sufficient control, and it could impact the interests of depositors and other clients of the financial institution; therefore, this could present substantive challenges to its effectiveness. It is important to note that this model implies purely a corporate insolvency process and, in practice, bank liquidation frameworks have typically included specific rules establishing a role for administrative authorities, although the intensity of their involvement may differ. Therefore, while the judicial model could be theoretically possible, it is almost inexistent.
- iii. **Hybrid model.** Under this model, the liquidation process is mainly carried out by a liquidator. The court has the responsibility of overseeing the process and taking relevant decisions along the process, including confirming the list of creditors and its ranking order, as well as deciding on any disputed claim brought forward by any relevant party to the process. The exact scope of a hybrid model depends on the concrete policy choices made by jurisdictions and their legal traditions, as there are models with limited

² Jurisdictions have observed different approaches, for instance some countries have developed specific provisions in dedicated bank liquidation law; while others refer to the general insolvency law provisions, with appropriate modifications (e.g., for transactions with related parties, bank liquidation frameworks often provide stricter rules).

participation of the administrative authorities and models which might entail a more significant role for these administrative authorities.

8. Regardless of the nature of the liquidation model, several reasons support the argument in favor of a key role to be played by an administrative authority like the NBM.

These reasons primarily relate to maintaining financial stability, ensuring depositors' protection, and avoiding unnecessary destruction of value and seek to minimize the overall costs. Continuity of critical services and depositor protection may be more relevant for bank liquidation, while value maximization pertains more to corporate insolvency regimes led by courts. In addition, synergies resulting from the administrative authorities' additional tasks can present economies of scale. Furthermore, administrative authorities would typically have the ability to undertake advance preparation (situation that differs in the case of courts). In any case, financial stability comes into play in consideration of the overarching objective of administrative authorities. While these considerations are usually associated with the failure of systemic or medium-sized banks, they could also be relevant for the liquidation of smaller institutions, but not however to the same degree.

9. System-wide considerations can typically be more easily and efficiently made by an administrative authority. On the grounds that even the failure of banks that will not be resolved could negatively affect the system (or a part of it), or undermine any anticipated resolution actions, there are strong arguments regarding the administrative authorities (e.g., banking supervisors or resolution authorities) as being better placed than courts to foresee what could be the consequences arising from a bank crisis. Financial stability is often also one of the legal objectives that bank supervisors and resolution authorities are expected to pursue. On these grounds, it can be argued that a key role for NBM in the procedure might turn out to be needed to maintain financial stability.

10. In general, the administrative bank liquidation model has often provided benefits.

Under an administrative model, resolution and liquidation functions could either be within the same authority or within different agencies. Choosing an administrative bank liquidation model when the same authority deals with both resolution and liquidation, in addition to present economies of scale, could allow the development of organizational structures conducive to enhancing expertise. This argument is further reinforced when, like in Moldova, a substantial share of banks would be liquidated in the event of failing or being likely to fail, while only a small number would be resolved.³

11. An administrative bank liquidation model aims to preserve institutional role in the interaction with the courts. The administrative authorities should have ample discretion when acting, and the courts should defer to such authorities when issues are related to their assigned discretionary power and limit their scope of action to reviewing the legality of the decision-

³ See International Monetary Fund, Technical Assistance Moldova, Financial Sector Stability Review, October 2021.

making process, and whether the mandatory decision-making process had observed the legal framework subject to the administrative authorities observing due process requirements. In any event the NMB should be recognized as a stakeholder in the process, as a party to be heard before a court decision and be granted a right to apply court for instructions or to appeal liquidator's decisions.

12. Another concern addressed by an administrative bank liquidation model relates to the speed and effectiveness of intervention by the resolution/liquidation authority.

Administrative authorities are able to undertake advance preparations, as compared to courts. Courts are usually less prone to taking complex decisions in a limited timeframe, which is exactly the scenario faced by administrative authorities if there is the need to swiftly execute a P&A transaction—which, can prove highly effective for dealing with distressed banks.⁴ In these cases, by avoiding having to ask for confirmation from a court, the risk of delays is substantially mitigated, and the administrative authority is able to execute such transaction in an accelerated timeframe, and with sufficient leeway.

13. The NBM has argued that the litigation and reputational risk of playing an active role in the liquidation process is impairing its discharge of other core functions.⁵ The NBM indicated that creditors and debtors have resorted to litigation, both in civil and criminal courts, which have impaired the regular exercise of functions by the NBM and its staff, despite legal protection.⁶ In addition it underscored that the risk of litigation could result from the decision to place a bank in liquidation and the need to have the NBM execute, or at least oversee the execution of, the preferred strategy. These decisions and their execution are the main source for litigation, since they might affect shareholders and creditors, thereby giving rise to legal claims against the NBM and the appointed liquidators. Moreover, the NBM sees its involvement in current responsibilities pertaining to bank liquidation as a potential drain on scarce resources and a source of reputational risk.

14. Considering the recommendation by the 2021 FSSR to change the regime that is currently in place does not exclude that the NBM should retain a prominent role.

According to the FSB Key Attributes, administrative authorities should maintain a prominent

⁴ The general benefits of a P&A transaction are that it provides depositors with prompt access to their insured deposits and the performing assets of the failed bank are quickly transferred to a healthy bank, so that their value is maintained. These benefits help promote and preserve confidence in the banking sector, minimize disruption to bank customers, and preserve financial stability by minimizing the likelihood of a bank run and contagion to the rest of the banking sector. The goal is to provide depositors with almost instant access to their funds (especially insured depositors) with financial assistance from the DGF, as is the case today with the forced liquidation mechanism.

⁵ See Paragraph 2.

⁶ The current legal framework limits the reversibility of liquidation decisions and allow only compensation, subject to important safeguards.

role with regard to a number of functions.⁷ These functions typically relate to: (a) ascertaining whether the triggers are met; (b) withdrawing the banking license; (c) starting the liquidation procedure through a petition to the court;⁸ (d) identifying (appointing or proposing to the court) liquidators with specific skills in banking matters; and (e) participating in discussions with the appointed liquidators on the most efficient liquidation strategy, and on how to execute it (particularly the transfer of assets and liabilities to another player), etc.⁹ The rationale behind this is that the administrative authorities aims to achieve the following objectives: (i) maintaining financial stability; (ii) protecting and enhancing public confidence in the banking system; (iii) ensuring continuity of critical financial services and functions; (iv) ensuring depositors' protection; and (v) avoid unnecessary destruction of value and seek to minimize the overall costs, where consistent with other objectives.

15. The mission has identified important considerations in support of a continued substantive role for the NBM in the bank liquidation procedure. These range from synergies resulting from the NBM acting as bank supervisor and being competent to adopt early intervention measures and resolution decisions, to achieve the objectives mentioned before. The NBM, in its role as bank supervisor, has access to relevant data and information concerning the state of health of Moldovan banks. In addition, as resolution authority, the NBM could adopt resolution measures to ensure continuity of financial services and pursue financial stability. Despite the risk of conflicts of interest that could result from the different roles assigned to the NBM, this setting can also bring advantages in terms of synergies and effective flow of information also, considering that courts typically lack the technical expertise needed to fully gauge the financial sector considerations associated with bank liquidation. Additionally, there are important synergies between (the planning of) bank liquidation and the NBM's responsibilities for adopting early intervention measures (particularly, temporary administration).

16. Liquidation entails distribution of losses among different stakeholders and is prone to legal challenges. The NBM has underscored that it has been subject to legal actions in civil and criminal courts. Losses for shareholders and creditors crystallize when assets are transferred, and the remaining (often almost valueless) assets are left in the entity to be liquidated. Depending on the perimeter of the transfer, a variable number of stakeholders will suffer losses. These stakeholders might challenge before a court the decision to transfer only some liabilities (namely, liabilities other than the ones toward them) and valuable assets, as this decision would

⁷ See, inter alia, KA 3.2(xii), the definition of "resolution," and the Explanatory Note 1(b) of the KA Assessment methodology.

⁸ See International Monetary Fund and World Bank, *An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency*, 2009, pointing out that "The banking authorities are almost universally empowered to initiate bank insolvency proceedings and, in many jurisdictions, are given exclusive competence to do so. Where other parties are allowed to commence insolvency proceedings, the banking authorities should be entitled to participate in all stages of the proceedings."

⁹ See accordingly International Monetary Fund, *Technical Assistance Moldova, Financial Sector Stability Review*, October 2021.

cause them to suffer losses. While the mission acknowledges that the current liquidation regime may continue to generate litigation risks for the NBM, such risks will also persist under a hybrid model, as they are inherently associated with the NBM's roles as prudential supervisor and resolution authority and therefore it seems difficult to escape from litigation.

17. Changes to the bank liquidation regime will not be a panacea for all the challenges underscored by the NBM in the discharge of its functions. Moving from an administrative regime will allow the NBM to share some of the responsibilities with other stakeholders, mainly the court. Theoretically, such allocation of responsibilities could potentially distribute the litigation risk which is currently faced by the NBM alone. However, an administrative authority with the power to withdraw a license and a substantial role in the liquidation process of a bank will remain exposed to litigation. Additionally, the challenges of an efficient liquidation regime could be related to idiosyncrasies of the Moldovan legal and judicial system, although these issues exceed that scope of this TA.

18. A new bank liquidation regime could free resources of the NBM, which can be put to better use on more relevant tasks promoting financial stability. As of 2021, the Resolution Division has at least half of its allocated staff members dedicated to the functions of bank liquidators in liquidation procedures. Such burden of work means that there are very few staff to perform the much needed functions of resolution authority. The change of liquidation regime, especially, but not limited to, what concerns the framework concerning the appointment and accountability of liquidators, will be a significant driver of the decrease in the burden of work of the NBM's Resolution Division regarding bank liquidation.

III. KEY FEATURES OF A BANK LIQUIDATION MODEL

A. Triggers

19. In the Moldovan legal framework that is currently in force, liquidation is triggered by the withdrawal of the bank license. Art. 38(1) of the Law on Bank Liquidation states that when the bank's license is withdrawn, the NBM shall take, ex officio, the decision to initiate the process of the bank's forced liquidation.¹⁰ In turn, the license is withdrawn primarily, but not exclusively, due to the bank becoming insolvent.

¹⁰ The withdrawal of the banking license could be the result of at least one of the insolvency situations provided for in Article 22 para (2) of the Law no. 202/2017 on the activity of banks or of one of the grounds provided for in Article 22, except for para (1) point (f) and (g), and para (3) of the Law no. 202/2017 on the activity of banks. Accordingly, the NBM may withdraw the license granted to a bank and initiate the liquidation procedure when: a) the bank has not started the activity for which it was authorized within 1 year from the date of granting the license, expressly renounces it or has ceased to carry out activity for more than 6 months; b) the license was obtained on the basis of false information or by any other unlawful means; c) the bank no longer meets the conditions on which the license was granted; d) *the bank no longer meets the prudential requirements regarding its own funds for covering the risks, large exposures or liquidity imposed, according to this law and the normative acts issued in its application, or there are elements that lead to the conclusion that, within 12 months, the bank will no longer be able to fulfill its obligations towards its creditors and, in particular, can no longer guarantee the safety of the assets*

20. Additionally, under art. 22 para (2) of the Law no. 202/2017 on the activity of banks, the NBM shall withdraw the license and initiate the process of forced liquidation of the bank if it is found that the bank is in one of the insolvency situations provided for in letters a)–c) of this paragraph and the conditions for initiating the resolution procedure, provided for in Article 58 of the Law no. 232/2016 on banks' recovery and resolution, are not met.

For the purposes of this paragraph, the insolvency situations are the following: a) the bank is not able to execute creditors' requests regarding the payment of outstanding pecuniary obligations (default); b) bank's assets no longer cover its obligations (over-indebtedness); c) the absolute amount of the bank's own funds is less than 1/4 compared to the minimum amount of own funds established in the normative acts of the National Bank of Moldova'. These provisions could benefit from clarifying if in the case the adequacy indicators of the bank's own funds calculated, according to Article 60 para (5), are below the level of ¼ of the adequacy indicators of own funds, as established by the NBM, the license should be withdrawn, and the liquidation procedure should start.

21. On the other hand, the first condition for placing a bank into resolution in Moldova is the NBM, as the competent authority, determining that such bank enters or is likely to be in a state of major difficulty. Under art. 59 of Law n. 232/2016, a bank shall be considered to be entering, or likely to enter, a state of major difficulty, if at least one of the following conditions is met: (a) the bank violates the requirements underlying the maintenance of the license or there are objective elements on the basis of which the NBM, as a competent authority, may determine that the bank will violate these requirements in the near future, to an extent that would justify the withdrawal of the license, including, but not limited to, the case when the bank has incurred, or is likely to incur, losses that will exhaust all or a significant part of its own funds; (b) bank's assets are inferior to debts, or there are objective elements on the basis of which the NBM, as a competent authority, can determine that this will happen in the near future; (c) the bank is unable to pay its debts or other obligations at maturity, or there are objective elements on the basis of which the NBM, as a competent authority, can determine that this will happen in the near future; (d) extraordinary public financial support is needed; and (e) the bank's capital is held at least 50 percent by persons who do not have the NBM's permission, in cases when it is mandatory under the law, or when the shares representing at least 50 percent of the bank's share capital have been cancelled as a result of noncompliance with the requirements on

entrusted to it by its depositors; e) the bank shall commit one of the sanctionable acts provided for in Article 140; h) the activities carried out by the bank in the first 3 years of operation differ considerably from those envisaged in the activity program presented at the license issuance stage, and, in the opinion of the NBM, such a deviation is not justified by the new economic circumstances; i) the direct and indirect holders of the bank's shares, including the beneficial owner, do not comply with the conditions provided by law to ensure a prudent and sound management of the bank or do not allow an efficient supervision; j) the circumstances that served as a basis for the appointment of the bank's temporary administrator according to the Law no. 232/2016 on banks' recovery and resolution have not been removed or, in the opinion of the NBM, they cannot be removed during the period of application of these measures.

shareholder quality as stipulated in the applicable legislation in the banking sector at the time of cancellation.¹¹

22. The second (negative) condition to be met in order for resolution to be initiated is the lack of effective alternatives. In this regard, art. 58(1) Lett. b) of Law n. 232/2016 states that the second condition for starting resolution is that *“taking into account the time horizon and other relevant circumstances, there is no reasonable prospect that the state of major difficulty could be prevented, within a reasonable period of time, by alternative private sector measures, including measures taken by an institutional protection system, or by supervisory measures, including early intervention measures or measures to reduce the value or convert relevant capital instruments, in accordance with the provisions of Article 220, taken in liaison with the bank concerned.”*

23. The third condition to be met in order for resolution to be initiated is that liquidation is considered unable to reach the resolution objectives to the same extent as resolution. On these grounds, as there is a public interest at stake, liquidation cannot take place. Against this backdrop, public interest refers to the ability of the chosen procedure to reach the resolution objectives.

24. It is questionable whether the conditions under Lett. d) of article 22 of Law no. 202/2017¹² are equivalent to the conditions under art. 59 of Law n. 232/2016. It could be argued that letter d) provides sufficient grounds to withdraw the license and liquidate a bank under financial distress and therefore failing or likely to fail. However, differences in terminology can lead to different interpretations, in particular before courts. Issues can come up if the conditions under Lett. d) of article 22 of Law no. 202/2017 are considered to be different from the conditions under art. 59 of Law n. 232/2016. If these conditions were different, when a bank that does not meet the public interest test were to meet the conditions under art. 59 of Law n. 232/2016, but not the ones under Lett. d) of article 22 of Law no. 202/2017, such bank would end up in a situation in which it could neither be resolved nor liquidated. Differences in the triggers of the two procedures might cause the risk of banks ending up in situations where the conditions for resolution are met apart from resolution being in the public interest while the conditions for liquidation are not met. Such situations (called limbo situations) might be difficult to manage for the authorities, as it is not clear how the struggling bank should be handled.

¹¹ It seems that the situations under lett. e) might fall also under a). On these grounds, it could be worth considering streamlining the framework by removing lett. e).

¹² The bank no longer meets the prudential requirements regarding its own funds for covering the risks, large exposures or liquidity imposed, according to this law and the normative acts issued in its application, or there are elements that lead to the conclusion that, within 12 months, the bank will no longer be able to fulfill its obligations towards its creditors and, in particular, can no longer guarantee the safety of the assets entrusted to it by its depositors.

25. Triggers for resolution and liquidation should be further aligned to prevent uncertainty that could undermine financial stability. Such alignment is crucial to ensure that every bank that meets the triggers for resolution, except – in the specific case of Moldova – for the public interest test applicable to resolution, can be placed quickly into liquidation (with the activation of the safety net architecture to protect depositors), without needing to adopt additional actions. In this way, the risk of banks ending up in a limbo situation where no crisis management procedure can be initiated, due to different triggers, can be avoided. Furthermore, considering the NBM is also in the process of revising the current resolution and deposit guarantee framework, it is essential to guarantee consistency between all these building blocks of the financial safety net architecture.

26. A timely intervention is essential in order to avoid value destruction, harm to depositors and, thus, potential impacts to the system’s stability, which could lead to a loss of confidence in it. On these grounds, triggers should have a forward-looking approach since this would enable the procedure to start before the institution becomes balance-sheet insolvent. The key concept in this regard is “nonviability.”

27. A simple way to align triggers between resolution and liquidation, is to use the triggers already in force for resolution. The same terminology in the relevant provisions setting out the triggers for the two procedures could ensure full alignment between them. The triggers for liquidation would then be: (1) the bank entering or likely to enter into a state of major difficulty;¹³ (2) the lack of alternative to private sector measures, including measures taken by an institutional protection system, or supervisory measures; and (3) liquidation being gauged by the authorities as capable to enable the achievement of the resolution objectives to the same extent as resolution.¹⁴ Some further guidance would then be introduced in the law to inform the choice between resolution and liquidation (which in the Moldovan case seems to be informed by the public interest test). In addition, authorities could evaluate maintaining the public interest test for Moldova, which could undermine the ability to apply resolution to small and medium-size entities, and predictability, with potential financial stability consequences.¹⁵

¹³ See International Monetary Fund, Technical Assistance Moldova, Financial Sector Stability Review, October 2021; the IMF FSSR had already recommended to adopt in the medium term a regulatory instrument (regulation or guidelines issued by the NBM) with additional guidance on how to apply the general criteria provided for in the BRRL for the determination of a bank as “failing or likely to fail.”

¹⁴ In transposing the BRRD through Legislative Decree no 180 of 2015 and Legislative Decree no 181 of 2015, Italy has aligned the triggers for resolution and liquidation (except for the public interest), with the effect that there is no vacuum in place.

¹⁵ It is important to note that there is a consensus among European institutions (Parliament, Council and Commission) that resolution should apply more often, including among smaller and medium-sized banks. To achieve this, the European Commission has proposed a number of changes to the criteria and process of the public interest assessment. [https://www.europarl.europa.eu/thinktank/en/document/IPOL_BRI\(2023\)741501](https://www.europarl.europa.eu/thinktank/en/document/IPOL_BRI(2023)741501)

B. Initiative to Trigger Liquidation

28. The initiative to start liquidation is typically a joint initiative undertaken by different authorities (or different units/divisions of the same authority). The key roles in this regard are to be played by the bank supervisor and the resolution authority, which, in Moldova, are both within the NBM, therefore facilitating the articulation between both functions.¹⁶ In a hybrid regime, the competent court will also be involved, to a certain extent, in assessing whether the conditions for liquidation have been met, without overstepping the expertise and discretion of the administrative authorities as to whether the bank is non-viable, and verifying any manifest error or material procedural violation on the side of the authorities.

29. Once the existence of the conditions for liquidation required by law has been ascertained, liquidation can formally commence following a petition to the competent court. To ensure that an administrative authority controls the initiation of the liquidation process, a clear role should be assigned, and its consent is needed for liquidation to proceed. For instance, such petition could be filed by the bank supervisor, by the resolution authority, or by the bank supervisor together with the resolution authority. In the Moldovan case, it will then be a prerogative of the NBM to file such a petition.

30. The competent court may issue a bank liquidation order if the procedure is observed and it is satisfied that the conditions requested by law for initiating liquidation are met. On an application for a bank liquidation order, the court may: (a) grant the application; (b) adjourn the application¹⁷; or (c) dismiss the application.

31. Yet, on the grounds that ascertaining the existence of the conditions for liquidation requires sophisticated skills in the field of banking and deep knowledge of the domestic banking system—which typically only the bank supervisor and the resolution authority possess—they should be given discretion in making such choices and taking inherent decisions. Such discretion should not be impaired by the subsequent court’s judicial control. Accordingly, the judicial control about the conditions to start the procedure to be conducted by the court typically refrains from questioning the discretionary evaluations/assessments that have been performed by the bank supervisor and resolution authorities, insofar as they do not present manifest mistakes and they have not breached procedural rules. The court’s control focuses on how the observance of the legal framework during the decision-making process related to the initiation of liquidation and on any violation of the procedural requirements.

¹⁶ For example, in the European Union, while the bank supervisor is in charge of ascertaining whether the bank is viable any longer (or is entering, or is likely to enter into a state of major difficulty), the resolution authority (in coordination with the bank supervisor) assesses the presence or absence of alternative private sector measures, including measures taken by an institutional protection system, or supervisory measures, and determines which of the two available procedures (liquidation or resolution) should be preferred to better achieve the policy objective.

¹⁷ For example, due to procedural reasons, such as the need to further examine the conditions, or the lack of evidence supporting the petition.

C. Transfer Powers

32. As per the FSB Key Attributes (KA 3.2 (xxii)¹⁸), resolution authorities should have the power to transfer the insured deposits and liquidate the whole or part of the failing bank. In the current forced liquidation procedure in Moldova, under the NBM's direction, the liquidator has the power to execute the sale of a bank's assets and liabilities subject to a forced liquidation procedure. The DGF is allowed to finance the gaps between assets up to the amount of the bank's covered deposits. The 2021 FSSR recognized the merits of keeping this optionality and pointed out that "under a new court-based procedure, it is recommended that an administrative pre-judicial phase be added, where the NBM has the option to execute a sale of assets and liabilities financed by the DGF as per the FSB's KAs."

33. Transferring deposits instead of paying out the depositors of the bank in liquidation has clear advantages. Deposit transfer to a healthy firm with the deposit insurance fund covering any potential gap in the assets transferred (on a least cost basis) could deliver significant benefits compared to placing the whole bank into liquidation and paying out deposit. In addition, depositors retain continuing access to their deposit accounts at the acquiring firm, minimizing disruptions. Experience from other jurisdictions (e.g., the US), suggests that it can secure higher "going-concern" values for the assets of a failed bank than liquidation.¹⁹

34. The Moldovan legal framework should contain the administrative power to arrange and transfer assets and liabilities in the context of a coherent resolution and liquidation framework allowing the authorities to handle the failure of all banks in a quick and cost-effective manner. If liquidation process is mainly carried out by a liquidator under the control of the court, it would be relevant for the administrative authority to retain the option to transfer good assets and selected liabilities to a healthy firm aside from the court lead procedure. In practice, this will require a careful determination of which assets to transfer and which liabilities to protect—with the latter typically including (insured) depositors. Therefore, to exercise of this power the administrative authority would need to undertake the necessary preparatory work and negotiations for a full or partial transfer of assets and liabilities to a willing buyer (what is usually called a P&A transaction), with the objective of safeguarding insured depositors. Such a framework would allow the administrative authority to act swiftly before having to make a more costly payout to depositors, under prior court's approval.

35. Such transfers could mitigate the risk of value destruction from the usual lower pace of courts making decisions. Since the most crucial bank assets to liquidate are typically loans, the slower the liquidation procedure, the lower the value that can be recovered from their

¹⁸ Effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely payout or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds).

¹⁹ See, International Monetary Fund, Managing systemic banking crises: new lessons and lessons relearned - prepared by an IMF staff team lead by Marc Dobler, Marina Moretti, and Alvaro Piris.

sale. This destruction of value, of course, would negatively affect the bank's creditors, who consequently would likely be able to recover only a minimal part of their credits. Such risk could be reduced by providing the administrative authority with the powers to arrange and transfer of assets and liabilities, while the liquidation would only concern the remaining assets and liabilities whose transfer to another entity was not possible.

36. A critical element for the effective use of such powers concerns the roles of the Administrative Authority. The legal regime would need to permit the administrative authority to undertake advance preparation, coordinate with the DGF, and negotiate a partial or full sale of the assets and liabilities with a willing purchaser. The administrative authority should also have all the legal powers to arrange and transfer assets and liabilities, under its sole responsibility, when the bank is entering or likely to enter into a state of major difficulty, and no alternative private sector measures would be able to restore its viability. In addition, under the current Moldovan regime this would be informed by the public interest test.²⁰

37. At a minimum, the legal framework regarding the administrative transfer should include:

- i. To provide the administrative authority with the option to exercise transfer powers prior to liquidation without requiring notification or consent of any interested party such as shareholders, depositors or other creditors;
- ii. The criteria to ground the administrative authority's actions, including financial stability considerations, or the need to protect depositors;
- iii. The administrative authority's powers should include, at a minimum, all the powers provided by corporate law not only to the executive board, but also to the supervisory bodies and the general assembly, and should be able to exercise requiring the consent; and
- iv. Exclude any fiduciary duty toward the credit institution, its shareholders and creditors.

38. A financing mechanism for a potential transaction of assets and liabilities to be effective should be included in the revised legal framework. Currently, under the NBM's direction, the liquidator has the power to execute the sale of bank's assets and liabilities subject to a forced liquidation procedure. The DGF finances the gaps of assets up to the amount of the bank's covered deposits. Preserving such a financing mechanism in the legal framework—subject to the use of a least-cost test²¹ under which the DGF may provide funding for a P&A up

²⁰ Please see discussion in paragraph 19 to 27 above, regarding the alignment of liquidation and resolution triggers.

²¹ See a definition of Least Cost Test for the use of DIF funding to resolution actions in International Monetary Fund, *Resolution Funding: Who Pays When Financial Institutions Fail?*, 2018, p. 10, Box 2: "*Net least-cost test: A net least-cost test ensures that costs to the deposit insurance fund (DIF) of contributing to a resolution event are no*

to an amount that would not exceed the amount of losses that the DGF would have borne under a counterfactual payout to depositors net of expected recoveries—would enhance the effectiveness of the hybrid liquidation regime.

39. The legal framework regulating the P&A should include adequate safeguards. If some creditors are affected by the partial sale of assets and liabilities, they should be entitled to a “no creditor worse-off” type of compensation. This compensation would avoid any claim of expropriation by affected creditors and provide equivalent safeguards to the resolution framework. However, to operationalize such a safeguard, the legal framework should provide for an independent valuation that sets out the compensation amount to be paid to affected creditors, and ideally prevent that public funds are used to pay compensations. The payment of any compensation should be the responsibility of the financing mechanism provided in the Law, in this case the DGF.

40. The legal framework should provide for judicial review of the decisions and measures adopted by the administrative authority when exercising its transfer powers. The review should be performed by the competent courts at the request of affected parties. The initiation of legal proceedings should not suspend implementation of the administrative authority’s decision, which should be immediately enforceable. The courts’ authorities should not extend to invalidating the transfer of assets and liabilities but rather to providing monetary compensation for harm caused. The invalidation of the P&A decision would raise serious issues in view of the retroactivity of its effect, which could compromise the credibility of the measure adopted by the administrative authority and adversely impact financial stability. Accordingly, the authorities should pursue, in line with the Constitution and legal framework, the introduction of provisions barring legal actions having the capacity to obstruct implementation of the P&A or potentially resulting in invalidation of the transfer.

higher than the costs the DIF would otherwise have incurred in a pay-out of insured depositors of the entities being resolved, net of expected recoveries. The test can be made operational simply by adopting/mandating a cap that prevents the DIF from contributing more than the estimated net cost it would have incurred if the troubled entity had been liquidated. A resolution can prove less costly if it delivers higher than liquidation value for the bank’s assets and liabilities. Such a cap would help limit the DIF’s contribution to the resolution of a bank where not only insured deposits but also other creditors are protected. In countries where insured deposits are preferred to other senior unsecured creditors, the net cost to the DIF in a liquidation might be zero, depending on losses. This should not prevent a DIF from supporting other types of resolution (e.g., a purchase and assumption) however, if it would also incur zero net cost to the DIS and deliver better policy outcomes, such as continuity of depositor services. As with a deposit insurance pay-out, an upfront cash or ‘gross’ contribution may be required to effect the resolution, and the formulation of the net least-cost test should not prevent this. In fact, such formulation should allow a gross contribution up to the value of the insured deposits; i.e., the amount the scheme would have paid out upfront in cash in a liquidation.”

D. Liquidators

41. The role of liquidators is of critical importance. It will be up to these insolvency practitioners to manage the insolvent estate, realize the assets, verify claims, and finally pay the bank's creditors. The core powers provided to the liquidators in the case of a bank liquidation may draw from the liquidators' powers in a typical corporate insolvency proceeding. Such powers usually include the following: (i) prepare the payment of the insolvency's debts and preserve the rights of the insolvent; (ii) prepare and present the insolvency accounts to the judge and bodies representing the creditors; (iii) represent the insolvent estate in all legal acts; (iv) verify and rank claims; (v) sell and choose the method of selling the assets of the insolvent estate; (vi) pay creditors; and (vii) draw up an insolvency plan, among other acts.

42. According to the NBM, the process of appointing bank liquidators in the current framework has been challenging. The reasons for the difficulties faced are multiple and range from a narrow pool of sufficiently qualified candidates to the unwillingness of some to accept the role when legal risks are faced and a low salary is factored in; however, there does not seem to be any legal impediments. This status quo has pushed the NBM to choose mainly its own staff to perform such functions.²² The consequence of such practice has been to divert its own human resources from performing the regular functions of a resolution authority to performing the less relevant functions—from a financial stability point of view—of bank liquidator, particularly after a transfer of assets to protect depositors has been implemented.

43. To avoid the practice of only appointing NBM staff as bank liquidators and to put in place an effective bank liquidation framework, consideration should be given to the following areas: (i) appointment procedure and suitability; (ii) accountability; (iii) remuneration; and (iv) legal protection. All these areas are critical for a successful and efficient discharge of functions by a liquidator; namely, in a judicial bank liquidation where the resolution authority is not in total control of the process.

44. The appointment of liquidators in a hybrid liquidation model should be competence of the court, but under the NBM's control through a proposal made by it.²³ This solution allows for the alignment of the sphere of competence of each party. The court retains its ultimate directional power over the insolvency process and the resolution authority contributes by proposing an adequate and suitable liquidator.²⁴ For this purpose, the legal framework should foresee some suitability criteria that should be followed by the administrative authority when choosing the liquidators to be proposed to the judge. These criteria should be aligned with the standard criteria for any corporate insolvency practitioner but should include some experience in

²² In such cases, according to the NBM, the salary of the bank liquidators is paid by the NBM.

²³ Conversely, in an administrative bank liquidation model, the power to appoint a liquidator falls exclusively on the administrative authority, as is currently the case under the forced liquidation framework in Moldova.

²⁴ Note that in more complex bank liquidation cases, more than one liquidator might be required to handle the entire workload. For such cases, the court should be able to appoint, based on a proposal by the resolution authority, a liquidation committee.

the financial and banking business.²⁵ Additionally, to avoid some of the challenges that were faced by the NBM in the past, appointing legal entities as professional liquidators (for example, audit firms) should be provided in the revised law. Nevertheless, some conditions to avoid conflicts of interest should also be considered.

45. Even though the liquidators are appointed by, and accountable to, the court, some accountability to the administrative authority should also be provided. The NBM should have a prominent role while monitoring the conduct of liquidation process, including its involvement in the determination of liquidator's remuneration. To ensure that liquidation is executed in the intended manner, it is relevant to include in the legal framework:

- i. Regular report obligations to the administrative authority;
- ii. Providing that certain acts taken by the liquidators, including the disposal of assets above a certain threshold, should be previously subjected to a consultation or approval procedure from the administrative authority;
- iii. Introduction of a reaction mechanism by the administrative authority, for example, by asking for the court to issue an injunction to the liquidator, in the event of any lack of provision of information, or possible provision of false or incomplete information by the liquidator or liquidation commission, or instruct the liquidator to fulfill its responsibilities without undue delays;
- iv. The power to propose the removal of the liquidator or liquidation committee, if established; and
- v. Obligations of the liquidator vis-à-vis the DGF, such as adequate exchange of information and coordination that would allow a prompt payout and coordination.

46. A sound remuneration policy that aligns the interest of the liquidation with the liquidator's incentives are vital for a swift but successful outcome of the liquidation. When interests are not aligned, liquidators could procrastinate in the discharge of their functions, delaying the end of the liquidation process and, with it, to keep receiving their salary. A solution to this problem is to provide a list of criteria²⁶ the NBM must refer to when proposing to the judge the remuneration policy or the liquidators. Such a policy should allow liquidators to receive a variable remuneration linked to the length of the liquidation procedure as an incentive to conduct the winding-up procedure expeditiously.

²⁵ For example, experience as member of a bank's board of directors, or at least a senior position in a bank's middle management, ex-staff member of the central bank/supervisory authority, experience in senior positions at consulting or auditing firms working in the banking business, etc.

²⁶ For example, providing on top of a fixed remuneration an additional amount increasing when time-set (internally determined) thresholds are met.

E. Legal Protection of the NBM

47. Lack of effective legal protection could undermine the authorities' actions. The objective of legal protection is to ensure that the authorities can take decisive actions by mitigating the chilling effect that potential lawsuits may have. Nevertheless, to balance such protection, the legal regime should also ensure a reasonable degree of accountability. Key issues for the design of the legal protection should consider the following issues:

- i. Persons to which legal protection should be extended for actions and omissions taken while discharging their legal responsibilities;
- ii. Delineate the limitations of the legal protection (e.g., would it cover administrative, and civil claims);
- iii. Standard of protection, indicating the test to determine if protection will be available (e.g., actions adopted in “good faith”); and
- iv. Determine the burden of proof.

48. The subjects of legal protection should be the personnel of the administrative authority and its agents. To safeguard the adequate decision-making process without the risk that legal claims or complaints could adversely affect their person or estate, within constitutional limitations, legal protection should apply to current and former officials and employees as long as their acts are executed under the standard of protection provided under the law. This protection is also typically extended to agents -persons who are acting under the control, or on behalf of the liquidation authority- (e.g., liquidators appointed by the liquidation authorities or other external professionals appointed to execute specific functions).

49. Legal protection is a key element to enhancing the effectiveness of the liquidation regime. Under the current regime (article 35 of the NBM Law), the NBM, the members of the decision-making bodies, liquidator, and its employees “*shall not be liable under the civil, administrative or criminal law, for the acts or facts performed or for failure to fulfil certain acts or facts related to exercising the duties conferred to the National Bank by the law..., except for the cases when the judicial court finds the fulfilment or omission to fulfil by these people, with bad-faith, of any act or fact related to the exercise of the National Bank’s duties, which caused damage to third parties.*” Such provision further indicates that the NBM will cover the expenses incurred as a result of the proceedings and extend the protection after the termination of the mandate or employment contract.²⁷ The legal framework seems to include provisions for legal

²⁷ It is noted that the legal protection framework is not limited to the liquidation measures, as it extends to the “duties conferred” to the NBM.

protection in line with best international practice.²⁸ Nevertheless, the NBM staff indicated that the beforementioned legal provision has been disregarded in practice, and both officials acting as liquidators and the NBM have been subject to legal actions brought by several stakeholders, including banks' shareholders and creditors. Given the relevance of adequate observance of the legal protection framework, the NBM should explore mechanisms to enhance the understanding of the NBM's legal framework (e.g., capacity development via tailored training to relevant stakeholders), considering the particularities of the Moldovan civil, administrative, and procedural regime. Furthermore, the NBM should carefully revisit the internal administrative sanctions framework.

F. Timeframe for the Conclusion of Liquidation Procedures

50. The Moldovan law provides for a timeframe to conduct the liquidation procedure that appears tight. The law (Art. 38 1 paragraph 7 of Law no. 550/1995) states that a bank's liquidation process may not exceed five years from the date of withdrawal of its license. Such term may be extended by the NBM for a maximum of two (additional) years based on the reasoned approach of the bank's liquidator. The NBM indicated that such timeframe is not realistic and it cannot be met always, as the liquidation procedure might take longer (there are currently four liquidation procedures ongoing that were initiated in 2014). Still, a reference to such a timeframe in the law might give rise to relevant issues, as the inability to comply with it could lead to litigation by stakeholders.

51. Liquidation is a time-consuming and potentially lengthy procedure. Its duration is often beyond the involved authorities' control. Accordingly, while the relevant role of timelines in legal procedures is acknowledged, complying with rigid and potentially unrealistic deadlines to finalize the liquidation procedure embedded in the law could be challenging; therefore, the liability of the NBM and its staff should be clarified.

52. To prevent liquidation procedures lasting too long, incentives should be considered. Economically, the longer the liquidation takes, the more the assets value will depreciate in real terms, which would always hurt the creditors in the long run. Therefore, incentives could be aligned with the liquidation objectives. For example, the liquidators' remuneration could be designed so as to provide also a variable component determined on the basis of the procedure's duration. The faster the procedure, the higher the variable component of their remuneration and vice versa. The framework could also consider including the preparation of a liquidation plan by the liquidator with a timeline and the liquidator duty to explain transparently where the liquidation falls behind the plan, and enhancing transparency and accountability of the liquidator.

²⁸ Examples of articles regarding legal protection can be found in Article 77 of the Law on the National Bank of the Republic of North Macedonia; Article 86 b of the Law on the National Bank of Serbia, and Article 68 of the Law on the National Bank of Georgia.

G. Institutional Set-Up and Financial Stability Concerns

53. Under the institutional set-up currently embedded in the Moldovan legal framework, the NBM is the central bank, the bank supervisor, and the resolution authority in charge of both resolution and liquidation. This set-up might allow for synergies, economies of scale, and scope and effective flows of information; yet assigning different functions to the same institution might also be prone to conflicts of interest, as the authority is meant to perform several potentially conflicting functions. Bank supervisor is typically well placed to have a full and precise understanding of the current conditions of the banks under its supervisory remit, as well as of their expected future developments, and to ascertain whether the bank is viable any longer (or is entering, or is likely to enter into a state of major difficulty); while the resolution authority usually has the experience, skills, and clear understanding of the bank and crisis concerned. Both the bank supervisor and the resolution authority need to be given discretion in assessing whether such conditions are met on a case-by-case basis.

54. The Banking Resolution Division is an independent structural subdivision of the NBM and reports directly to the member of the Executive Board with responsibility over the resolution function, according to the order of the NBM Governor.²⁹ The general purpose activity of the Banking Resolution Division is the organization and exercise of the NBM's competencies as the resolution authority, application of bank resolution instruments, organization, and supervision of the liquidation process of banks whose licenses were withdrawn by the NBM until the conclusion of the process and erasing of the bank from the State Register of Legal Entities.

55. The Banking Resolution Division (BRD) is constituted of two sub-units. One is the Resolution Division and the other is the Liquidation Unit. As of 2021, the total approved headcount for the Division was 15 Full-Time Equivalent (FTE). As referred in the 2021 FSSR, the BRD has responsibilities both in bank resolution and liquidation, which are complex and, in some cases, new topics, and therefore require an adequate number of qualified staff. As of 2021, the BRD had a Bank Resolution Unit with seven staff and a liquidation unit with four staff (excluding managers). However, the staff allocated to the Bank Liquidation Unit are the employees of the NBM, who have been appointed liquidators of banks under the forced liquidation procedure. In sum, for all the tasks concerning resolution and liquidation, only seven staff are available, which seems insufficient when considering all the workload of a resolution and liquidation authority.

56. The bank supervision function is shared by at least two departments, with different report lines. One is the Bank Supervision Department, with an approved headcount of 57 FTE. The other is the Department of Regulation and Authorization, with an approved headcount of 24 FTE. The mission noted that currently the report lines of both Departments are structurally

²⁹ [https://www.bnm.md/files/Organigrama%20BNM%20\(eng\).pdf](https://www.bnm.md/files/Organigrama%20BNM%20(eng).pdf).

independent from the member of the Executive Board with responsibility over the resolution function.³⁰

57. A system based on the central bank acting also as bank supervisor and resolution authority in charge of both resolution and liquidation can ensure more effectively that financial stability concerns are taken into due consideration at any point in time. Central banks typically have the task of maintaining financial stability in their mandate. Such attention institutionally paid to financial stability will also drive the discharge of the other tasks assigned to them, particularly regarding bank crisis management.

58. The NBM institutional set-up seems to observe best international practice and to prevent conflicts of interest. The institutional set-up of several countries provides that the same institution acts as the central bank, bank supervisor, and resolution authority in charge of both resolution and liquidation. In most cases, these central banks establish a number of separate units to deal with such matters, and which are established under different directorates, with different reporting lines limiting the risk of conflicts of interest.³¹ Given the current structure (different reporting lines), the NBM seems to observe such practice.

H. Other Issues

59. Jurisdiction of the court that will be responsible for the liquidation is key for a successful conclusion of any process. According to the NBM, the experience with regional courts has shown that some of these courts are not ready to deal with any issue related to bank liquidation. This problem is compounded when taking into consideration the lack of legal sophistication in the entire body of judges. In this vein, countries have established jurisdiction over any bank liquidation procedure to a specialized court in Insolvency or Corporate Law matters, or have provided such jurisdiction to a central court, where the judges appear to be experienced in more complex cases. In any case, for an effective bank liquidation regime, the assigned court should have proven capabilities to deal with the winding down of sophisticated entities, with a broad range of stakeholders in an effective manner. The NBM could evaluate engaging with the relevant stakeholders (e.g., MoJ) to explore options to facilitate accumulating expertise in commercial courts, for instance specialization of commercial courts where bank's headquarters are located. Furthermore, the lack of capacity or adequate governance of the courts would raise serious concerns and undermine the liquidation process.

60. The NBM staff indicated that they would explore the inclusion of a Creditor's Committee. If such a body is provided for in the revised bank liquidation law, then the authority should assess their participation in the creditors' committee meetings. By not participating in such meetings, not only would it be left outside the information-sharing workflow, but it would also be blocked from participating in discussions. However, because in a bank liquidation

³⁰ Idem.

³¹ See Annex 1: Bank of Italy Chinese walls.

process the DGF (if there is a payout of insured deposits) and the Resolution Fund (if the liquidation takes place after the application of resolution tools financed by the Resolution Fund awarding it a claim in the liquidation) might also be part of the Creditor's Committee, there is the potential risk of an over-representation of public authorities in such committee, which would defeat the purpose of its existence. Therefore, the administrative authority should be provided with a limited-observer status and not a full-member status. In any case, the role – if any – of a Creditor Committee in a bank liquidation framework should be minimal and consultative, without involvement in those aspects that are closely related to financial stability (e.g., the transfer of assets and liabilities).

61. Banks previously subject to resolution might also be subject to liquidations. In such cases, the legal framework should explicitly leave outside the court's scope of action any reversal of the resolution measures previously applied by the resolution authority.³² Furthermore, the court responsible for the liquidation process should abstain from taking any decision that could hinder the ongoing implementation of the resolution measures.

³² See, International Monetary Fund, *Managing systemic banking crises: new lessons and lessons relearned* - prepared by an IMF staff team lead by Marc Dobler, Marina Moretti, and Alvaro Piris, p. 14.

