

Emica Zdravković

Specijalista za pravne poslove
Udruženja banaka Srbije

OSVRT NA NOVELIRANI TEKST ZAKONA O BANKAMA

Zakon o izmenama i dopunama Zakona o bankama objavljen je 03.12.2010. godine („Službeni glasnik RS” br. 91/10), a stupio je na snagu 11.12.2010. Ovim Zakonom uspostavljen je pravni okvir kojim se omogućava bliže definisanje novih pravila i principa u poslovanju banaka. U postupku donošenja Zakona uzete su u obzir inicijative i predlozi Udruženja banaka Srbije i banaka, Agencije za osiguranje depozita i Svetske banke, a korišćena su i iskustva većine zemalja EU i zemalja u okruženju. Ovim Zakonom realizovana je obaveza Republike Srbije koju je preuzela potpisivanjem sporazuma sa Svetskom bankom u vezi sa garantovanjem veće stabilnosti i sigurnosti u finansijskom sektoru.

Emica Zdravković

Legal Affairs Specialist
at the ASB

REVIEW OF THE AMENDED LAW ON BANKS

Law on amendments to the Law on Banks was published on 3 December 2010 (“Official Gazetteer of the RS”, No. 91/10), and came into force on 11 December 2010. This Law established legal framework allowing closer definition to be given to new rules and principles in banking operations. In the adoption procedure of the Law, all the initiatives and suggestions tabled by the Association of Serbian Banks and banks themselves were taken into account, also those by the Deposit Insurance Agency and the World Bank, with experiences from most of the EU countries and the neighbouring countries were also applied. The adoption of this Law designates an obligation complied with, that the Republic of Serbia has undertaken by signing of the agreement with the World Bank on guaranteeing higher stability and security in the financial sector.

Razlozi za donošenje zakona

Donošenjem Zakona o bankama („Službeni glasnik RS”, broj 107/05) stvorene su realne pretpostavke za dalji razvoj i modernizaciju bankarskog sektora u Republici Srbiji. Najvažnije novine u tom zakonu odnosile su se na korporativno upravljanje bankom, dvofazni postupak osnivanja banke, uvođenje kontrole banke na konsolidovanoj osnovi, način sticanja učešća u banci, upravljanje rizicima, odnos između banke i klijenta, spoljnu reviziju banke, kao i preciziranje i detaljnije uređivanje postupka kontrole boniteta i zakonitosti poslovanja banke. Ovaj zakon je u velikoj meri usklađen s propisima Evropske unije, a njime je stvoren i osnov za prilagođavanje propisa Narodne banke Srbije principima i preporukama koje je ustanovio Bazelski komitet za kontrolu banaka (tzv. Bazel I i II) i aktuelnim tendencijama u sferi uporednog bankarskog zakonodavstva.

Svetska finansijska kriza, koja je od 2007. godine pogodila nacionalne ekonomije širom sveta, uticala je na gotovo jednodušan stav u mnogim zemljama da postojeći normativni okvir nije dovoljan za sprečavanje ili ublažavanje efekata nastupanja kriznih situacija, te da je potrebno preispitati i reformisati propise kojima se uređuje oblast finansija, a posebno pravna pravila koja se odnose na poslovanje banaka. Pri tom, regulatorne novine usmerene su na važeće sistemske propise, ali i na stvaranje posebnih pravnih pretpostavki za preduzimanje neophodnih mera za vreme trajanja sistemske krize.

Imajući u vidu navedeno, kao i da su se pojavili određeni praktični problemi tokom primene pojedinih odredaba ovog zakona - Narodna banka Srbije (NBS), Ministarstvo finansija (Ministarstvo) i Agencija za osiguranje depozita (Agencija) su sačinili izmene i dopune ovog zakona.

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Udruženja banaka Srbije i banaka, Agencije za osiguranje depozita i Svetske banke, a korišćena su i iskustva većine zemalja EU i zemalja u okruženju. Ovim Zakonom realizovana je obaveza Republike Srbije koju je preuzela potpisivanjem sporazuma sa Svetskom bankom u vezi sa garantovanjem veće stabilnosti i sigurnosti u finansijskom sektoru.

Osnovni ciljevi ovog zakona su stvaranje pravnog osnova za predviđanje delotvornih mera kojima bi se očuvala finansijska stabilnost u Republici Srbiji, zaštitili interesi deponenata, kao i očuvanje i jačanje poverenja javnosti u bankarski sektor. Zakonom se obezbeđuje stabilnost i konsolidacija bankarskog sektora, sprečava prenošenje teškoća u poslovanju pojedinačne banke na sistemski nivo, minimiziraju troškovi za Republiku Srbiju, Agenciju i NBS, a obezbeđuje se i očuvanje vrednosti imovine banaka, kao i zaštita deponenata i drugih poverilaca.

Najvažnije novine:

1. Davanje dozvole za rad banci za posebne namene, koja se osniva na određeno vreme na zahtev Agencije - osnivača banke, u postupku administrativnog upravljanja bankom u skladu sa zakonom kojim se uređuje stečaj i likvidacija banaka i društava za osiguranje, radi prenosa celokupne ili dela imovine i obaveza banke kojoj je NBS oduzela dozvolu za rad.
2. Proširenje razloga za uvođenje prinudne uprave u banci, u tom smislu što suštinski razlog za uvođenje ove korektivne mere predstavlja poboljšanje finansijskog stanja te banke, a ako to nije moguće - očuvanje interesa deponenata. Novinu predstavlja i to što se predviđa obavezno uvođenje prinudne uprave ako se pojave teškoće kod sistemski značajne banke, a Agenciji se daje mogućnost da u toku trajanja prinudne uprave sprovede test izračunavanja najmanjeg troška.
3. Uvođenje privremene obustave ispunjenja obaveza banke u kojoj je uvedena prinudna uprava, na predlog prinudnih upravnika, čiji je cilj sprečavanje "stampeda" poverilaca banke, čime se prinudnoj upravi daje dovoljno vremena da razmotri mogućnosti

Rationale for adoption of the Law on Banks

Adoption of the Law on Banks ("Official Gazetteer of the Republic of Serbia", No. 107/05), set in place pragmatic prerequisites for further development and modernisation of the banking sector in the Republic of Serbia. The most important innovations in this Law were those pertaining to the corporate bank governance, a two-stage bank establishment procedure, introduction of bank controls on consolidated basis, manner of acquiring stock in the bank, risk management, relationship between banks and customers, external bank auditing, and a more specific and detailed arrangements for the credit rating control and legality of banking operations. The said Law was extensively harmonised with the European Union regulations, and it offers grounds for the adjustments to be made of the National Bank of Serbia rules with the principles and recommendations set forth by the Basel Committee on Banking Supervision (the so-called Basel I and Basel II), and the actual tendencies in the sphere of comparative banking legislation.

The global financial crisis impacting national economic throughout the world, from the year 2007 onwards, brought about an almost unison stand in many countries that the current normative regulatory framework was insufficient to prevent or mitigate the effects of crisis, and that it is necessary to re-examine and reform regulations in the field of finance, especially the legal framework pertaining to the banking business. Regulatory innovations were, in this case, streamlined towards the systemic regulations, but also towards setting up of specific legal prerequisites for undertaking necessary measures during the times when systemic crisis prevail.

Mindful of the above stated, and of certain practical problems that have also occurred during the implementation of some provisions of this Law - National Bank of Serbia (NBS), Ministry of Finance (Ministry), and the Deposit Insurance Agency (Agency) compiled amendments to the Law in question.

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Gazetteer of the RS", No. 91/10), and came into force on 11 December 2010. This Law established legal framework allowing closer definition to be given to new rules and principles in banking operations. In the adoption procedure of the Law, all the initiatives and suggestions tabled by the Association of Serbian Banks and banks themselves were taken into account, also those by the Deposit Insurance Agency and the World Bank, with experiences from most of the EU countries and the neighbouring countries were also applied. The adoption of this Law designates an obligation complied with, that the Republic of Serbia has undertaken by signing of the agreement with the World Bank on guaranteeing higher stability and security in the financial sector.

The main objectives of this Law are the creation of legal basis that would allow introduction of effective measures aimed at safeguarding financial stability in the Republic of Serbia, and protection of interests of depositors, while, in turn, providing for preservation and strengthening of public confidence in the banking sector. Law secures stability and consolidation of the banking sector, prevents spilling over of difficulties in operation of individual banks into the system in general, minimises costs for the Republic of Serbia, the Agency and the NBS, and secures preservation of the banks assets value, as well as protection of depositors and other creditors.

The most important innovations:

1. Granting operating license to the special purpose bank, to be established for a limited period of time, and at the request of the Agency - founder of a special purpose bank, in the procedure of receivership administration management, in accordance with the law governing bankruptcy and liquidation of banks and insurance companies, for the purpose of assignment of the entire or part of the assets and liabilities of the bank which has been revoked the operating licence by the NBS.
2. Expanding reasons for the introduction of receivership in a bank, in the sense that the essential reason for introducing this corrective measure should be an

za poboljšanje finansijskog stanja banke.

4. Izmene i dopune koje se odnose na organizaciju poslovanja banke i delokrug rada upravnog i izvršnog odbora kao i odbora za praćenje poslovanja banke (odbor za reviziju) - za potrebe usklađivanja upravljanja rizicima kojima je banka izložena ili može da bude izložena u svom poslovanju, sa principima i preporukama Bazelskog komiteta za kontrolu banaka (Bazel II).
5. U krug lica povezanih sa bankom umesto zaposlenih u banci ubrajaju se članovi odbora banke utvrđenih ovim zakonom.
6. Uvodi se obaveza za banke da objavljuju određene podatke i informacije o svom poslovanju i svoj rad učine transparentnijim.
7. Umesto dosadašnje tri uzastopne revizije spoljni revizori mogu da vrše najviše pet uzastopnih revizija kod iste banke,
8. Menjaju se i dopunjuju razlozi na osnovu kojih Narodna banka Srbije može odbiti zahtev lica predloženog za člana upravnog odbora banke.
9. Razlozi za preduzimanje privremene mere prema banci su prošireni, u smislu da se već postojećim u članu 109. Zakona o bankama dodaje i ugroženost interesa deponenata banke odnosno mogućnost za ugrožavanje tih interesa.
10. Otklanjanje teškoća u praktičnoj primeni pojedinih odredaba zakona (saradnja NBS sa regulatornim telima, izuzeci od obaveze čuvanja bankarske tajne, revizija kod statusnih promena banke, obezbeđivanje potpisa najmanje dva člana izvršnog odbora banke, poništenje akcija banke za koje je ukinuta saglasnost ili za koje NBS nije dala saglasnost, službena tajna, rok za dostavljanje primedaba banke na zapisnik o kontroli (15 radnih dana), kao i za dostavljanje dopune zapisnika o kontroli, mogućnost da se ista korektivna mera ponovi, izricanje novčane kazne članovima upravnog ili izvršnog odbora banke, trajanje prinudne uprave, odgovornost za štetu nastalu vršenjem dužnosti utvrđenih ovim zakonom).
11. Proširen je osnov predviđen kao izuzetak od obaveze čuvanja bankarske tajne iz

člana 48. stav 1. tačka 2) Zakona o bankama - saopštavanje podataka za potrebe organa nadležnog za sprečavanje pranja novca, u skladu s propisima, i na saopštavanje podataka za potrebe ministarstva nadležnog za unutrašnje poslove i organa nadležnog za borbu protiv organizovanog kriminala u skladu s propisima.

12. U odnosu na dosadašnja zakonska rešenja u zakonu kojim se uređuje stečaj i likvidacija banaka menjaju se ovlašćenja NBS kod dobrovoljnog prestanka rada banke i kod oduzimanja dozvole za rad banke, tako što NBS više ne donosi sa rešenjem o oduzimanju dozvole za rad banke i rešenje o likvidaciji banke, već rešenjem o oduzimanju dozvole za rad imenuje Agenciju za administratora u skladu sa zakonom kojim se uređuje stečaj i likvidacija banaka i društava za osiguranje. Takođe, kod dobrovoljnog prestanka rada banke NBS daje saglasnost na odluku skupštine banke o prestanku rada, odnosno ako odbije zahtev banke za davanje takve saglasnosti - banci će rešenjem oduzeti dozvolu za rad i imenovati Agenciju za administratora.

13. Briše se institut privrednih prestupa, pa se u tom smislu preciziraju i reklasifikuju određena kažnjiva dela, a pojedine izmene su pravno redakcijskog karaktera.

Materija ovog zakona, načelno posmatrano, nije uređena zakonodavstvom Evropske unije, ali njegove odredbe su u skladu sa Statutom Evropskog sistema centralnih banaka i Evropske centralne banke, koji propisuje da taj sistem doprinosi, između ostalog, finansijskoj stabilnosti, kao i sa odredbama u vezi s upravljanjem rizicima koje se odnose na poslovanje i organizaciju banke primenom Bazel II standarda.

Osnovni pravni instituti i pojedinačna rešenja

U nastavku teksta navodimo osnovne pravne institute koji su uređeni noveliranim tekstom Zakona o bankama:

Pojam banke za posebne namene - Članom 2, novim stavom 2. Zakona određuje se pojam banke za posebne namene kao banke koja se, u smislu zakona kojim se uređuju stečaj i

improvement of the financial status of such a bank, and if that should not be feasible - preservation of interests of depositors. The novelty in this respect is that the mandatory order for receivership shall be introduced if difficulties are to be incurred by a systemically significant bank, and the Agency is given the option, for the duration of the receivership, to conduct the minimum cost assessment testing.

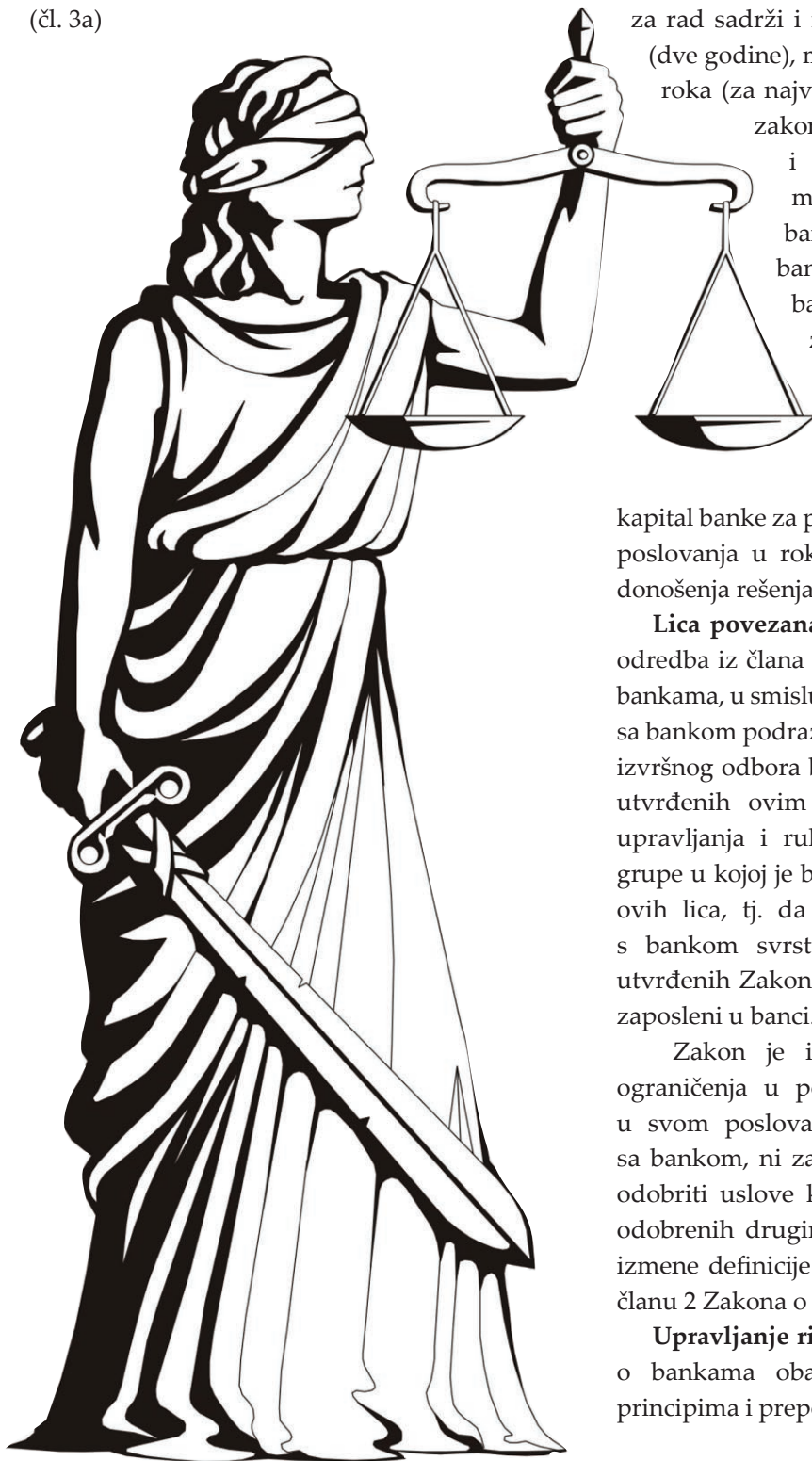
3. Introducing interlocutory suspension of incurred liabilities settlement by the bank where receivership was introduced, at the proposal of the official receiver, for purpose of preventing a “run” of bank creditors, thus allowing sufficient time to the receivership administration to assess options that would improve financial status of the bank.
4. Amendments pertaining to the operational organisation of the bank and the scope of work of the board of directors and of executive board of a bank, but also of the board monitoring banking operations (auditing board)-for purpose of harmonising bank risk exposure management, or possible risk exposures in its operations, with the principles and recommendations of the Basel Committee on Banking Supervision (Basel II Accord).
5. Within the circle of persons linked with a bank, instead of persons employed at the bank, members of the bank’s boards, as prescribed in this Law, shall be deemed persons linked with the bank.
6. Mandatory obligation is being introduced for the banks to disclose certain data and information about their operations and their work, thus making their business more transparent.
7. Instead of the previously prescribed three consecutive auditing, external auditors are now allowed to carry out not more than five consecutive auditing procedures at the same bank.
8. Grounds for the National Bank of Serbia to refuse request for a person proposed to be appointed member of the board of directors of a bank are now amended.
9. Grounds for introducing receivership in a bank are now extended in the sense that in the already present Article 109 of the Law

on Banks, endangering interests of bank depositors i.e. possibility of endangering such interests is now being added and stipulated therein.

10. Elimination of difficulties in the practical application of certain provisions of the Law (cooperation of the NBS with the regulatory authorities, exemptions from the banking secrecy liability, auditing in cases of status changes in a bank, securing signatures of not less than two members of the bank’s executive board, cancellation of bank shares where approval of the NBS was suspended or rejected, professional confidentiality, deadline for submission of bank comments on the conducted control minutes (15 working days), and also for submission of supplements to the control minutes, the option given for the same corrective measure to be repeated, pronouncement of pecuniary fines on members of the board of directors or executive board of a bank, period of duration of receivership, liability for damages caused during execution of duties prescribed under this Law).
11. Grounds were expanded which prescribed as exemption from the banking secrecy liability under Article 48 para 1 item 2) of the Law on Banks - disclosure of data when necessary to the authorities in charge of money laundering prevention, in accordance with regulations in force, and disclosure of data required by the ministry in charge of interior affairs and authorities competent for fight against organised crime, in accordance with relevant regulations in force.
12. Regarding current legal provisions of the law regulating insolvency and liquidation of banks, competences of the NBS are now amended in the area of voluntary bank business termination and withdrawal of the bank’s operating license, thus prescribing that NBS shall no longer pass a decree on bank liquidation together with the decree on revoking bank operating licence, but in the decree revoking bank operating licence, NBS shall nominate the Agency as the receivership administrator, in accordance with the law regulating bankruptcy and liquidation of banks and insurance companies. In addition, in case of

likvidacija banaka i društava za osiguranje, na zahtev Agencije kao osnivača ove banke, osniva na određeno vreme, radi prenosa celokupne ili dela imovine i obaveza banke kojoj je NBS oduzela dozvolu za rad.

Na banku za posebne namene ne primenjuju se odredbe Zakona koje se odnose na davanje preliminarnog odobrenja za osnivanje banke, dozvolu za rad, osnivačku skupštinu i registraciju banke, kao i odredbe o uvođenju prinudne uprave i izricanju novčane kazne (čl. 3a)



Za osnivanje banke za posebne namene novčani deo osnivačkog kapitala ne može biti manji od 5.000.000 evra u dinarskoj protivvrednosti, prema zvaničnom srednjem kursu na dan uplate (čl. 12 novi stav 4).

U novom članu 18a bliže je propisan postupak osnivanja ove banke, koji se smatra hitnim. O zahtevu Agencije za davanje dozvole za rad banke za posebne namene NBS odlučuje rešenjem i to narednog dana od dana prijema urednog zahteva. Rešenje o izdavanju dozvole za rad sadrži i rok na koji se banka osniva (dve godine), mogućnost za produženje tog roka (za najviše dve godine) u skladu sa zakonom kojim se uređuje stečaj

i likvidacija banaka, kao i mogućnost da prodajom akcija banke za posebne namene ta banka nastavi da posluje kao banka u skladu sa ovim zakonom. Banka za posebne namene je dužna da uskladi svoje poslovanje sa odredbama Zakona o bankama koje se odnose na kapital banke za posebne namene i pokazatelje poslovanja u roku od šest meseci od dana donošenja rešenja o davanju dozvole za rad.

Lica povezana sa bankom - Izmenjena je odredba iz člana 2. stav 25. tačke 2. Zakona o bankama, u smislu da se pod licima povezanim sa bankom podrazumevaju članovi upravnog i izvršnog odbora banke, članovi odbora banke utvrđenih ovim zakonom, članovi organa upravljanja i rukovođenja člana bankarske grupe u kojoj je banka, kao i članovi porodice ovih lica, tj. da su u krug lica povezanih s bankom svrstani članovi odbora banke utvrđenih Zakonom o bankama, a izuzeti su zaposleni u banci.

Zakon je izričito u čl. 37 propisao ograničenja u poslovanju banke, te banka u svom poslovanju, pored lica povezanog sa bankom, ni zaposlenom u banci ne može odobriti uslove koji su povoljniji od uslova odobrenih drugim licima, a što je posledica izmene definicije lica povezanih s bankom u članu 2 Zakona o bankama.

Upravljanje rizicima - U članu 28. Zakona o bankama obavljeno je usklađivanje sa principima i preporukama Bazelskog komiteta

a voluntary termination of bank operations, NBS shall give its approval of the bank's assembly decision on termination of work, i.e. if the NBS should reject the bank request for granting such approval - NBS shall, by its decree, revoke operating licence of the bank and shall nominate the Agency as receivership administrator.

13. Institute of corporate offence is deleted and in this respect specific punishable actions are specified and re-classified, with certain changes made of a legally-editorial character.

Subject matter of this Law, generally speaking, is not regulated under the European Union legislature, but its provisions are concurrent with the Statute of the European System of Central Banks and the European Central Bank, which prescribe that this system contributes, inter alia, towards financial stability, and synchronised with the provisions pertaining to the risk management in banking operation and organisation through the implementation of the Basel II Accord standards.

The main legal institutes and particular arrangements

Further in this text we are listing the main legal institutes which are regulated under the innovated wording of the Law on Banks:

The notion of a special purpose bank - Article 2, new para. 2 of the Law, designates the notion of a special purpose bank as a bank which is established, according to the law governing bankruptcy and liquidation of banks and insurance companies, at the request of the Agency, the founder of a special purpose bank, for a definite period of time, for purpose of assignment of the entire or part of the assets and liabilities of the bank which has been revoked the operating licence by the NBS.

Special purpose bank is not subject to the provisions of the Law which pertain to the issue of preliminary approval for bank establishment, operating licence, founding assembly and bank registration, and neither is the special purpose bank subject to provisions regulating entry into receivership, nor imposition of pecuniary fines (Article 3a).

The funds required for the establishment of a special purpose bank, as part of the founding capital of the bank, may not be below 5,000,000 EUR in dinar counter-value, calculated according to the mean official exchange rate on the day of payment (Article 12 new para. 4).

The new Article 18a regulates in more detail the bank establishment procedure, which is deemed to be urgent. NBS decides in its decree passed on the day following the day of receipt of the properly submitted request of the Agency, applying for the issue of the special purpose bank operating licence. Decree on granting operating licence designates the period of time for which the bank is being established (two years), option for extending this period (two years maximum) in accordance with the law governing bankruptcy and liquidation of banks, and also the option - through the sale of shares of the special purpose bank - for the bank in question to be allowed to continue functioning as a bank, in accordance with this Law. Special purpose bank must harmonise its business with the provisions of the Law on Banks regulating capital of the special purpose bank and its business indicators, within six months from the date when the decree was passed granting its operating licence.

Persons linked with a bank - Provisions under Article 2 para 25 item 2 of the Law on Banks were amended, and now persons linked with the bank designate members of the board of directors and executive board of a bank, members of the committees of a bank defined under this Law, members of the controlling and managing authorities of a banking group to which that bank belongs, as well as family members of such persons, i.e. the circle of persons linked with a bank is now deemed to comprise members of the bank boards, as prescribed in the Law on Banks, while persons employed in the bank are exempt.

In Article 37, the Law explicitly prescribed limitations to the banking operations, thus a bank in its business, in addition to persons linked with the bank, may not approve even to the persons employed in the bank, terms and conditions more favourable than terms and conditions granted to other persons, and this is the results of amendments to the definition of persons linked with a bank under Article 2 of

za kontrolu banaka (Bazel II) i tendencijama uporednog bankarskog zakonodavstva tako što je propisano da je banka dužna da obezbedi funkcionalnu i organizacionu odvojenost aktivnosti upravljanja rizicima i redovnih poslovnih aktivnosti banke (novi stav 3).

U stavu 5 precizirano je da banka svojim aktima propisuje strategije i politike za upravljanje rizicima i strategiju upravljanja kapitalom banke pored već propisanih procedura za identifikovanje, merenje i procenu rizika, a u stavu 6 određen je sadržaj ovih akata i to:

1. procedure za identifikovanje, merenje i procenu rizika;
2. procedure za upravljanje rizicima;
3. procedure kojima se obezbeđuje kontrola i dosledna primena svih unutrašnjih akata banke u vezi sa upravljanjem rizicima i
4. procedure za redovno izveštavanje organa banke i regulatornog tela o upravljanju rizicima.

NBS može propisati bliže uslove i način identifikacije, merenja i procene rizika, kao i upravljanja rizicima.

Izvršeno je pravno-redakcijsko usklađivanje tako što je odredba člana 21. stav 3. Zakona o bankama dopunjena u smislu da, NBS pored propisivanja načina izračunavanja kapitala i adekvatnosti kapitala banke, propisuje uslove i način dobijanja saglasnosti za izračunavanje kapitala i adekvatnosti kapitala banke.

Objavljivanje podataka i informacija banke

- Dodat je nov član 51a, kojim se propisuje da je banka dužna da objavljuje podatke o strategiji i politikama upravljanja rizicima banke, kapitalu banke, adekvatnosti kapitala banke, kao i druge podatke, odnosno informacije, u skladu sa propisima NBS, osim onih koji su materijalno značajni, čije bi objavljivanje u javnosti moglo negativno da utiče na konkurentski položaj te banke na tržištu, kao i podatke i informacije koji predstavljaju bankarsku tajnu u smislu ovog zakona. Narodna banka Srbije bliže propisuje sadržaj podataka odnosno informacija iz ovog člana, kao i uslove, način i rokove za njihovo objavljivanje.

Izmenjen delokrug organa banke

Skupština banke - izvršeno je usklađivanje člana 66. stav 1. tačke 8) Zakona o bankama sa izmenama učinjenim u članu 134. ovog zakona,

tako što se propisuje da Skupština banke odlučuje o preuzimanju prava i obaveza banke u postupku administrativnog upravljanja, odnosno banke za posebne namene.

Upravni odbor - Za potrebe usklađivanja sa standardima Bazel II u smislu upravljanja rizicima, izmenjen je delokrug rada upravnog odbora banke u članu 73. Zakona o bankama, tako što je proširen na:

- utvrđivanje strategije i politike upravljanja rizicima, kao i strategije upravljanja kapitalom banke;
- utvrđivanje unutrašnje organizacije, odnosno organizacione strukture banke koja obezbeđuje podelu dužnosti, nadležnosti i odgovornosti zaposlenih na način kojim se sprečava sukob interesa i obezbeđuje transparentan i dokumentovan proces donošenja i sprovođenja odluka i usvajanje politika zarada i ostalih primanja zaposlenih u banci.

Osim toga, u članu 72. Zakona o bankama menjaju se razlozi za uskraćivanje saglasnosti licu predloženom za člana upravnog odbora, odnosno utvrđuju sledeći razlozi: 1) lice koje je na dan oduzimanja dozvole za rad banci ili šest meseci pre tog dana, odnosno na dan uvođenja prinudne uprave u banci bilo ovlašćeno za predstavljanje i zastupanje, odnosno koje je član organa upravljanja te banke; 2) lice koje je član bilo kog organa upravljanja druge banke, odnosno zaposleni u banci i 3) lice pravosnažno osuđeno za krivično delo na bezuslovnu kaznu zatvora ili pravosnažno osuđeno za krivično delo koje ga čini nepodobnim za obavljanje te funkcije. Propisan je izuzetak, u smislu da se pod napred navedenim licem ne smatra lice koje je bilo ovlašćeno za predstavljanje i zastupanje, odnosno član organa upravljanja banke za posebne namene kojoj je NBS oduzela dozvolu za rad na predlog Agencije.

Izvršni odbor - Izmenjen je delokrug rada izvršnog odbora banke u članu 76. Zakona o bankama u smislu prilagođavanja novom načinu upravljanja rizicima banke (Bazel II), tako što je propisano da izvršni odbor banke:

- sprovodi strategiju i politike za upravljanje rizicima, kao i strategiju upravljanja kapitalom i
- usvaja procedure za identifikovanje, merenje i procenu rizika, kao i upravljanje rizicima,

the Law on Banks.

Risk management - In Article 28 of the Law on Banks, harmonisation was made with principles and recommendations of the Basel Committee for Banking Supervision (Basel II), and tendencies of comparative banking legislature, by prescribing that the bank must provide for functional and organisational separation of the risk management activities from regular business activities of the bank (new para. 3).

In para 5, it is specified that the bank, in its enactments, shall prescribe strategies and policies for risk management, and the strategy for bank capital management, in addition to the already prescribed procedures for risk identification, measurement and assessment, while in para 6 the contents of the said enactments is set forth, as follows:

1. Procedures for identification, measurement and assessment of risks;
2. Risk management procedures;
3. Procedures securing control and consistent implementation of all the internal enactments of the bank pertaining to risk management; and
4. Procedures for regular reporting to the bank bodies and regulatory authority on risk management.

NBS may prescribe specific conditions and manner of risk identification, measurement and assessment, and also for risk management.

Legally-editorial harmonisation was conducted so that the provision of Article 21 para 3 of the Law on Banks is now amended with the wording that the NBS, in addition to prescribing manner of calculation for the capital and capital adequacy of a bank, shall also prescribe terms and manner of obtaining approval for the calculation of capital and capital adequacy of a bank.

Disclosure of bank data and information - Article 51a is added, prescribing duty of the bank to disclose data on the bank's strategy and policies in risk management, bank capital, bank capital adequacy, and other data, i.e. information in accordance with the NBS regulations, except those of material, tangible significance, where disclosure to the public could have a negative effect on the competitive advantage of that bank on the market, and also

data and information deemed to be banking secrecy under this Law. National Bank of Serbia shall prescribe in more detail contents of data, i.e. information stipulated in this Article, and also terms, conditions and manner of their disclosure.

Amendments to the scope of work of the bank bodies

Bank Assembly Meeting - Harmonisation was made between Article 66 para 1 item 8) of the Law on Banks and amendments made to Article 134 of this Law, and now it prescribes that the bank Assembly Meeting shall decide on assignment of the bank's rights and obligations in the procedure of receivership, i.e. taking over by the special purpose bank.

Board of Directors - Mindful of the need for harmonisation with the Basel II standards pertaining to risk management, scope of work of the board of directors of a bank was amended in Article 73 of the Law on Banks, and was extended to the following:

- Setting up of the risk management strategy and policy, and also of the bank capital management strategy;
- Designing an internal organisation, i.e. organisational structure of the bank that shall provide for separation of duties, competencies and responsibilities of persons employed in the manner preventing conflict of interests and insuring a transparent and documented process in decision-making and decision-implementing, and adoption of policies on salaries and other remunerations of the staff employed at the bank.

In addition, in Article 72 of the Law on Banks, grounds are amended for the NBS to refuse to approve a person proposed to be appointed to the board of directors membership, i.e. the following grounds are set forth: 1) person who on the day the bank operating licence was revoked, or six months prior to that day, i.e. on the day of introduction of the receivership in the bank, was authorised for its representation and acting on its behalf, i.e. who is a member of the managing authority of that bank; 2) person who is a member of any managing body of another bank, i.e. employed in the bank; and 3) person, a convicted felon for a criminal offence, with a legally binding

analizira efikasnost njihove primene i izveštava upravni odbor u vezi sa tim aktivnostima.

- izmenjena je obaveza predsednika izvršnog odbora banke iz čl. 75. stav 3. Zakona o bankama da pri preduzimanju pravnih radnji u ime i za račun banke obezbedi potpis još jednog člana tog odbora tako što je proširena i na zaključivanje pravnih poslova, s tim da su ti pravni poslovi i pravne radnje preduzeti iz delokruga tog odbora.

Izmenjen je delokrug rada odbora za praćenje poslovanja banke (odbor za reviziju) iz člana 80. stav 5. tač. 2. i 3. Zakona o bankama tako što su vršene ispravke pravnoredakcijskog karaktera za potrebe prilagođavanja novom načinu upravljanja rizicima i sistemima unutrašnjih kontrola banke (Bazel II).

Ukidanje saglasnosti za sticanje akcija -

Izmenjene su odredbe koje regulišu situaciju kada NBS ukinе saglasnost za sticanje akcija (član 99.), odnosno kada NBS odbije da da saglasnost za sticanje akcija licu koje ih stekne nezavisno od svoje volje - pravnim sledbeništvom, nasleđivanjem i dr. (član 100.). Naime, u primeni važećih odredaba člana 99. stav 4. i člana 100. stav 5. pojavile su se teškoće kad sticalac nije otuđio akcije u ostavljenom roku, a banka je trebalo da ih poništi na teret akcionarskog kapitala. Banke su obično obavestavale NBS da poništenje akcija nije izvodljivo jer su se akcije otuđile nakon dostavljenog naloga centralne banke. Stoga je sada predviđeno da NBS istim rešenjem kojim ukida svoju ranije datu saglasnost, odnosno rešenjem kojim odbija da da saglasnost, zabranjuje takvom licu raspolaganje svim pravima iz akcija na osnovu kojih je stečeno ovo vlasništvo, a istovremeno mu može naložiti da to vlasništvo otuđi (član 99), odnosno naložiće mu da to vlasništvo otuđi do nivoa i u roku određenom tim rešenjem (član 100.). Ova odredba je u skladu s članom 20. Zakona o tržištu hartija od vrednosti i drugih finansijskih instrumenata („Službeni glasnik RS”, br. 47/2006), kojim je propisano da se pravima iz hartija od vrednosti može neograničeno raspolagati u pravnom prometu, osim ako tim ili drugim zakonom nije drukčije određeno.

Službena tajna - Definisan je pojam službene tajne, pod kojim se podrazumevaju

podaci koje zaposleni u Narodnoj banci Srbije i ovlašćena lica iz člana 103. stav 2. Zakona o bankama na bilo koji način saznaju, a odnose se na kontrolu boniteta i zakonitosti poslovanja banke, kao i dokumenti koji sadrže takve podatke, uključujući privremene i korektivne mere koje NBS preduzima prema bankama, kao i sporazum o utvrđivanju kriterijuma za određivanje sistemski značajnih banaka (stav 1). Stavom 2. ovog člana propisana je obaveza čuvanja službene tajne, odnosno da se podaci i dokumenta koja predstavljaju službenu tajnu ne mogu učiniti dostupnim trećim licima, osim u slučajevima predviđenim krivičnim zakonikom, kao i na osnovu odluke ili zahteva nadležnog suda, koja ostaje i nakon prestanka radnog odnosa, odnosno angažovanja u NBS ili drugog svojstva na osnovu kojeg su ova lica ostvarila pristup takvim podacima (stav 3). Stavom 4. predviđen je izuzetak od obaveze čuvanja službene tajne u odnosu na strana i domaća regulatorna tela, pod uslovom da ih ta regulatorna tela koriste isključivo u svrhe za koje su pribavljena. Predviđeno je i da se objavljivanje ovakvih podataka, izraženih u zbirnom obliku tako da se na osnovu njih ne može utvrditi identitet pojedinačnih banaka, odnosno fizičkih i pravnih lica ne smatra povredom obaveze čuvanja službene tajne.

Prinudna uprava u banci - Izmenjene su odredbe postojećeg člana 117. Zakona o bankama koje se odnose na prinudnu upravu u banci. Pre svega, izmenjena je lista osnova za uvođenje prinudne uprave i to:

1. ako utvrdi da postoji mogućnost da banka bude kritično potkapitalizovana;
2. ako je utvrđeno da je banka kritično potkapitalizovana, a radi se o sistemski značajnoj banci;
3. ako je kontrolom poslovanja banke utvrđeno postupanje, odnosno nepostupanje suprotno propisima ili standardima savesnog bankarskog poslovanja koje je ugrozilo njeno finansijsko stanje ili interese deponenata ili
4. čije se finansijsko stanje pogoršalo u toku roka za izvršenje naloga iz rešenja iz člana 116. Zakona o bankama.

Uvođenjem standarda „verovatnoće” u nastupanju kritične potkapitalizovanosti ili drugih uslova, daje se ovlašćenje NBS da proaktivno nastupa u bankarskom sektoru,

sentence pronounced for effective prison term, or a person convicted felon for a criminal offence rendering him incompatible for executive functions. An exemption is herewith prescribed and stipulates that under the above stated person, a person shall not be deemed incompatible if it was authorised to represent and act on behalf, i.e. was a member of the bank management authority of the special purpose bank that had its operating license revoked by the NBS, at the proposal of the Agency.

Executive Board - Scope of work of the bank's executive board is amended in Article 76 of the Law on Banks in the sense of adjustment to the new manner of the bank risk management (Basel II), and it is prescribed that the executive board of a bank shall engage as follows:

- Implement strategy and policy of risk management, and the strategy of capital management;
- Adopt procedures for identification, measurement and assessment of risk, and risk management, analyse efficiency of their implementation and report to the board of directors on these activities.
- Obligation of the chairman of the executive board of a bank is being amended in Article 75, para 3 of the Law on Banks, when engaging in legal actions in the name and for the account of the bank, to secure the signature of yet another member of the executive board, and it is now extended and covers work on legal affairs, provided such legal affairs and legal actions are undertaken within the scope of duties of the executive board.

Scope of work of the board for monitoring bank operations (Auditing Board) is amended in Article 80 para 5 items 2 and 3 of the Law on Banks, through correction made of a legally-editorial character, for the necessary adjustments to be made to the new manner of risk management and systems of internal controls of the bank (Basel II).

Suspension of approval for shares acquisition - Provisions have been amended regulating cases when the NBS shall suspend its approval for shares acquisition (Article 99), i.e. when the NBS refuses to approve acquisition of shares to a person who has acquired them not of his own free will - through legal succession,

by inheritance, etc. (Article 100). Namely, in the application of provisions under Article 99 para 4 and Article 100 para 5 that are now in force, some difficulties have appeared when the holder of shares (title transferee) did not alienate shares in the time so prescribed, when the bank should have cancelled them by debiting equity capital. Banks were notifying the NBS that cancellation of shares was not feasible as the shares were alienated after the order of the central bank was submitted. Thus it is now prescribed that the NBS, in the same decree ordering suspension of its previously granted approval, i.e. in the decree refusing approval, shall now prohibit such person the exercise of any and all the rights deriving from shares on the basis of which ownership right was acquired, and at the same time, NBS may order such a person to alienate the ownership of shares (Article 99), i.e. shall order him to alienate the ownership of shares up to the level and within the time as set forth in this issued decree (Article 100). This provision is concordant with Article 20 of the Law on Securities Market and other Financial Instruments ("Official Gazetteer of the RS", No. 47/2006), which prescribes that rights deriving from securities may be exercised without limits in legal transactions, except when otherwise prescribed by this, or some other Law.

Professional confidentiality - The notion of professional confidentiality is defined as pertaining to the data that persons employed at the National Bank of Serbia and authorised persons from Article 103 para 2 of the Law on Banks, have gained the knowledge of, in any manner whatever, such data dealing with the control of credit rating, solvency and legality of banking operations, and also documents containing the respective data, including interim and corrective measures undertaken by the NBS towards banks, and agreement on determining criteria for designation of systemically important banks (para 1). The same article, in its para 2, prescribes the obligation of keeping professional secrecy, i.e. obligation of keeping data and documents that designate professional secrecy inaccessible to third persons, except in cases prescribed in the Penal Code, and on the basis of the order or request issued by the competent court of law, obligation of keeping professional secrecy remaining in force after termination of

naročito kad postoje ozbiljniji sistemski poremećaji.

Izmene u odnosu na postojeća rešenja su i u tome što NBS može doneti rešenje o uvođenju prinudne uprave ceneći i interese deponenata a ne samo mogućnost za otklanjanje nepravilnosti i poboljšanje finansijskog stanja, čime se opravdava uvođenje prinudne uprave, koja ne dovodi do poboljšanja finansijske situacije u banci, nego do prestanka rada banke (npr. prenos imovine i obaveza banke).

Kriterijumi za utvrđivanje sistemski značajne banke posebnim sporazumom utvrđuju NBS i ministarstvo nadležno za poslove finansija (stav 3), i to u odnosu na obim i značaj posledica koje bi pogoršanje finansijskog stanja banke moglo imati na očuvanje stabilnosti finansijskog sistema, a naročito imajući u vidu uticaj te banke na poslovanje drugih banaka, nesmetano funkcionisanje platnog sistema i njeno učešće u ukupnom iznosu osiguranih depozita. Rešenjem o uvođenju prinudne uprave imenuju se dva prinudna upravnika i određuje rok trajanja prinudne uprave, a utvrđuje se i visina naknade za rad prinudnih upravnika, koja pada na teret banke. Danom donošenja rešenja o uvođenju prinudne uprave u banci prestaju funkcije članovima upravnog i izvršnog odbora, a funkcije upravnog i izvršnog odbora banke preuzimaju prinudni upravnici.

Povećanju pravne sigurnosti doprinosi i to da se upis prinudne uprave u registar privrednih subjekata vrši danom donošenja rešenja o njenom uvođenju, te je propisano da Narodna banka Srbije dostavlja agenciji nadležnoj za vođenje registra privrednih subjekata rešenje o uvođenju prinudne uprave istog dana kada ga je donela. Prinudni upravnici su dužni da se u svom radu pridržavaju instrukcija NBS.

Prinudna uprava može trajati najduže šest meseci, uključujući i imenovanje organa banke, a NBS može rešenjem produžiti trajanje prinudne uprave u banci za još tri meseca, ako proceni da je to potrebno da bi se okončale započete aktivnosti radi ostvarivanja ciljeva prinudne uprave (stav 13). Prinudna uprava nad bankom može se okončati i pre isteka roka na koji je uvedena, ako prinudni upravnici ili NBS ocene da uvođenje prinudne uprave nije dovelo do poboljšanja finansijskog stanja banke ili da se finansijsko stanje te banke popravilo u

meri da prinudna uprava više nije potrebna.

Dodati su novi članovi 117a i 117b, kojima se uređuju sprovođenje prinudne uprave i privremena obustava ispunjenja obaveza banke.

U članu 117a uređeno je sprovođenje prinudne uprave. Prvi zadatak koji se pri tom postavlja pred prinudne upravnike jeste procena finansijskog stanja u banci na dan uvođenja prinudne uprave, koju prinudni upravnici dostavljaju NBS i Agenciji. Imajući u vidu načelo hitnosti postupanja u ovakvim situacijama, prinudni upravnici dužni da bez odlaganja sazovu skupštinu banke radi održavanja sednice u roku koji ne može biti kraći od pet niti duži od deset dana od dana uvođenja prinudne uprave. Većinski akcionari banke su dužni da sačine plan aktivnosti i da ga dostave prinudnim upravicima u roku od 20 dana od dana uvođenja prinudne uprave u banci, o čemu su prinudni upravnici dužni da ih obaveste na prvoj sednici skupštine koja se saziva bez odlaganje. Plan aktivnosti treba da sadrži predlog aktivnosti banke neophodnih za otklanjanje nepravilnosti u njenom poslovanju i za poboljšanje njenog finansijskog stanja (povećanje kapitala banke - dokapitalizacija banke, spajanje ili pripajanje banke drugoj banci. Prinudni upravnici dostavljaju Narodnoj banci Srbije i Agenciji procenu finansijskog stanja banke i plan aktivnosti, najkasnije u roku od mesec dana od dana uvođenja prinudne uprave. NBS je dužna da u roku od 15 dana od dana prijema plana aktivnosti obavesti prinudne upravnike da li je saglasna sa tim planom, pri čemu je predviđeno da će NBS dati saglasnost na plan aktivnosti ako oceni da se predloženim aktivnostima mogu otkloniti nepravilnosti u poslovanju banke i poboljšati njeno finansijsko stanje, a ako odbije da dâ saglasnost na plan aktivnosti, NBS će doneti rešenje o oduzimanju dozvole za rad banke i imenovati Agenciju za administratora. Obaveza prinudnih upravnika je da najmanje jednom mesečno izveštavaju NBS i Agenciju o poslovanju banke pod prinudnom upravom, njenom finansijskom stanju, kao i sprovođenju plana aktivnosti, odnosno bez odlaganja kada utvrde da se plan aktivnosti ne sprovodi ili da ne doprinosi poboljšanju finansijskog stanja. Agencija je ovlašćena da tokom trajanja prinudne uprave sprovodi test

employment, i.e. engagement at the NBS, or termination of other features on the basis of which such persons have gained access to the said data (para 3). Para 4 prescribes exemption from the obligation of keeping professional confidentiality in respect to foreign and domestic regulatory authorities, provided such regulatory authorities shall use the data exclusively for purposes for which they were acquired. It is also prescribed that the disclosure of confidential data shall be made in their aggregate state, thus on the basis thereof no identity of any individual bank may be recognized nor the identity of physical persons and legal entities, further prescribing that such disclosures shall not be deemed a breach or violation of the professional confidentiality liability.

Receivership in a bank - Provisions under Article 117 of the Law on Banks are amended when they apply to the receivership in banks. Primarily, the list of grounds for introducing receivership in a bank is amended and reads as follows:

1. If it is determined that there is a possibility for a bank to be critically under-capitalised;
2. If it has been determined that a bank is critically under-capitalised, and it is a systemically important bank;
3. If the control of a bank's operation identified action, i.e. inaction, opposed to regulations or standards of conscientious banking practices, which placed in jeopardy bank's financial position or interest of its depositors; or
4. If the financial status of a bank has deteriorated within the time set for executing orders given in the decree under Article 116 of the Law on Banks.

Introduction of the "probability" standard in the occurrence of critical under-capitalisation, or some other conditions, renders the NBS authorised to venture proactively in the banking sector, especially when there are serious systemic disturbances.

Amendments to the present provisions consist of the fact that the NBS may pass a decree on the introduction of receivership when finding that also the interests of depositors are in jeopardy, and not only the options for eliminating irregularities and making improvements in the financial situation of the bank, thus justifying introduction of the

receivership that, although not conducive to the improvement of financial situation in the bank, shall lead to the termination of work of the bank in question (for example, insure assignment of assets and liabilities of the bank).

Criteria for designating systemically significant banks are determined in an agreement made between the NBS and the ministry in charge of financial affairs (para 3), in respect to the volume and importance of consequences that a deteriorated financial situation of the bank could have on the preservation of stability of the financial system, especially bearing in mind the impact that such banks are having on the operation of other banks, smooth functioning of the payment system, and its share in the total amount of secured deposits. Decree on introduction of the receivership nominates two official receivers and sets the period of duration of the receivership, but also determines the amount of fees to be paid for work of the official receivers, to be charged to the bank. With the day of passing of the decree on introduction of the receivership, in the bank in question functions of the members of the Board of Directors and of the Executive Board are suspended, and the functions of the Board of Directors and of the Executive Board of the bank are taken over by the official receivers.

Legal security is further enhanced by the fact that registration of receivership in the Companies Register is done on the day of passing of the decree of its introduction, and it is prescribed that the National Bank of Serbia shall submit to the agency in charge of keeping the Companies register, a decree on the introduction of receivership on the same day when it has passed such a decree. Official receivers must comply with instructions of the NBS in their work.

Receivership may extend for a period of not more than six months, including appointment of the bank bodies, and the NBS may extend the duration of receivership in a bank through its decree, for another three months, if it should find it necessary for completion of activities commenced for reaching targets set by the receivership (para 13). Receivership in a bank may be terminated before the time has expired for which it was introduced, if the

izračunavanja najmanjeg troška u skladu sa zakonom kojim se uređuje agencija za osiguranje depozita. Narodna banka Srbije je ovlašćena da propiše bliže uslove i način vršenja prinudne uprave nad bankom.

Odredbama člana 117b uređena je **privremena obustava ispunjenja obaveza banke** tokom prinudne uprave, koju može rešenjem naložiti NBS, na predlog prinudnih upravnika, na vreme do 30 dana (stav 1). U toku ove obustave:

1. imovina banke ne može biti predmet izvršenja, niti se prema banci mogu podnositi tužbe sa imovinskopравnim zahtevima, a svi postupci protiv banke se u vezi s ovim prekidaju;
2. banka ne može preuzimati nove obaveze, osim obaveza koje su neposredno povezane s nesmetanim sprovođenjem prinudne uprave i
3. ne mogu se protiv banke, prinudnih upravnika i NBS podnositi tužbe koje proizlaze iz poslovanja banke ili iz te obustave, uključujući i rešenje o privremenoj obustavi ispunjenja obaveza banke.

U toku obustave mogu se vršiti samo plaćanja:

1. po osnovu osiguranih depozita, i to do visine osiguranog iznosa prema stanju i

uslovima koji važe na dan donošenja rešenja o privremenoj obustavi ispunjenja obaveza banke;

2. po osnovu gore navedenih novih obaveza;
3. po osnovu naloga za plaćanje koji su banci ispostavljeni do dostavljanja prinudnim upravicima;
4. ako za to postoje naročito opravdani razlozi - na osnovu saglasnosti prinudnih upravnika (stav 3). Prinudni upravnici su dužni da plaćanja u toku privremene obustave ispunjenja obaveza banke vrše na način kojim se obezbeđuje jednak tretman osiguranih deponenata.

Članom 34. dopunjuje se postojeći član 118. stav 1. Zakona o bankama tako što se razlozi za razrešenje člana upravnog ili izvršnog odbora proširuju i na slučaj kad banka NBS ne omogući da izvrši kontrolu boniteta i zakonitosti njenog poslovanja.

Izmenjena je odredba člana 119. stav 1. Zakona o bankama koja se odnosi na slučajeve kada NBS može dati nalog banci da razreši člana upravnog ili izvršnog odbora banke, čime je izvršeno usklađivanje sa izmenama odredaba koje se odnose na osnov za odbijanje zahteva lica predloženih za članove upravnog, odnosno izvršnog odbora u smislu da će Narodna banka Srbije izdati nalog za razrešenje

Zakon o izmenama i dopunama Zakona o bankama objavljen je 03.12.2010. godine („Službeni glasnik RS” br. 91/10), a stupio je na snagu 11.12.2010.

Law on amendments to the Law on Banks was published on 3 December 2010 (“Official Gazetteer of the RS”, No. 91/10), and came into force on 11 December 2010.



official receivers or the NBS should find that introduction of receivership has not brought about improvement of financial status of the bank, or that financial situation of that bank has so improved that receivership is no longer necessary.

New Articles 117a and 117b have been added regulating introduction of receivership and provisional suspension of bank liabilities settlement.

Article 117a regulates introduction of receivership. The first task placed before the official receivers is to assess financial situation in the bank as of the day of introduction of receivership, and this assessment shall be submitted to the NBS and the Agency. Mindful of the principle of urgency in dealing with such situations, official receivers must, promptly, convene bank assembly in order to hold the meeting within the time that shall not be less than five, nor longer than ten days, from the day of introduction of the receivership. Majority shareholders of the bank must compile an action plan and submit it to the official receivers within 20 days from the day of introduction of receivership in the bank, the official receivers having the duty to inform them to that effect, at the first assembly meeting which has been promptly, urgently convened. Action plan must contain proposal for bank activities necessary to eliminate irregularities in its operations and improve its financial situation (increase of bank capital - bank re-capitalisation, merger, or acquisition of the bank by another bank). Official receivers shall submit to the National Bank of Serbia and to the Agency estimated financial situation of the bank and the action plan, not later than one month from the day of introduction of receivership. NBS must, within 15 days from the day of receipt of the action plan, inform official receivers of its approval of the said plan, and it is stipulated herein that the NBS shall give its approval of the action plan if it should deem that the proposed activities are appropriate for elimination of irregularities in the bank's operations, and that its financial situation can be improved, but if the NBA is to refuse to approve the action plan, NBS shall pass a decree on revoking operating licence of the bank and shall nominate the Agency as the administering receiver. Official receivers have

the duty to inform, at least once each month, the NBS and the Agency, of the operations of the bank in receivership, its financial status, and implementation of the action plan, i.e. once they determine that the action plan is not being implemented or that it fails to improve financial situation, they must promptly inform the above mentioned accordingly. Agency is authorised, during the period of receivership, to conduct minimum cost calculation test, in accordance with the law regulating Deposit Insurance Agency. National Bank of Serbia is authorised to prescribe detailed terms and conditions for the implementation of receivership in a bank.

Article 117b prescribes **interim suspension of bank liability settlement** during the receivership, which may be ordered by the decree of the NBS, at the proposal of the official receivers, for the duration of up to 30 days (para 1). During the suspension:

1. Bank assets can not be subject to enforcement, nor can the bank be subject of a filed lawsuit for proprietary legal claims, and all judicial procedures against the bank in this respect shall be suspended;
2. Bank shall not undertake new obligations, except liabilities directly connected with unhindered implementation of receivership; and
3. Against the bank, official receivers and the NBS, no action can be brought deriving from bank business operations, or from suspension, including the decree for interim suspension of the bank liability settlement.

During the suspension, only the following payments are allowed: 1) payments made on secured deposits, up to the secured amount according to the balance and terms valid on the day the decree was issued ordering interim suspension of bank liability settlement; 2) payments of the above stated new liabilities; 3) payments of payment orders submitted to the bank before submission to the official receivers; 4) if based on especially justified grounds - payments approved by official receivers (para 3). Official receivers must effect payments, during the interim suspension of bank liabilities settlement, in the manner providing for an equitable treatment of secured depositors.

Article 34 supplements the existing Article 118 para 1 of the Law on Banks, by extending

člana upravnog ili izvršnog odbora banke ukoliko je to lice pravosnažno osuđeno za krivično delo na bezuslovnu kaznu zatvora ili pravosnažno osuđeno za krivično delo koje ga čini nepodobnim za obavljanje te funkcije.

Dopunjen je član 112. Zakona o bankama tako što se odredbom stava 3. NBS omogućava da obustavi postupak kontrole banke kad utvrdi da je banka postupila u skladu s merama koje joj je NBS izrekla, odnosno ako nije - da joj ponovo izrekne novu meru, u skladu s kriterijumima propisanim u članu 120. Zakona o bankama.

Razlozi za oduzimanje dozvole za rad banci - Izmenjeni su razlozi za obavezno oduzimanje dozvole za rad banci u članu 130 Zakona kada NBS:

1. utvrdi da je banka koja nije sistemski značajna kritično potkapitalizovana, osim ako je u toj banci uvedena prinudna uprava;
2. da akcionari banke u kojoj je uvedena prinudna uprava nisu sačinili plan aktivnosti u propisanom roku;
3. ako oceni da se planom aktivnosti iz tačke 2) ovog stava ne mogu otkloniti nepravilnosti u poslovanju banke i poboljšati njeno finansijsko stanje;
4. da se u banci u kojoj je uvedena prinudna uprava ne sprovodi plan aktivnosti na koji je Narodna banka Srbije dala saglasnost;
5. da aktivnosti koje se sprovode u skladu sa planom aktivnosti na koji je NBS dala saglasnost ne dovode do poboljšanja finansijskog stanja banke u kojoj je uvedena prinudna uprava;
6. ako banka šest meseci neprekidno obustavi primanje depozita ili odobravanje kredita, osim ako joj je to naloženo korektivnom merom NBS i
7. ako se u banci, u kojoj je uvedena prinudna uprava, do isteka roka ne otklone razlozi koji su doveli do uvođenja prinudne uprave.

Takođe, stavom 2. proširen je krug razloga za fakultativno oduzimanje dozvole za rad banci dodavanjem sledećih:

1. **11a)** kada NBS utvrdi da banka neće moći da izmiri svoje obaveze prema deponentima i drugim poveriocima;
2. **11b)** kada NBS utvrdi da banka neracionalno troši sredstva (imovinu) zbog postupanja suprotnog propisima ili standardima

savesnog bankarskog poslovanja, a to može imati za posledicu pogoršanje njenog finansijskog stanja; 11v) kada banka ne omogući NBS da izvrši kontrolu boniteta i zakonitosti njenog poslovanja.

Takođe, izvršene su i izmene u smislu usaglašavanja sa odredbama zakona kojim se uređuje stečaj i likvidacija banaka i društava za osiguranje. U stavu 6. je predviđeno da se Agencija imenuje u rešenju o oduzimanju dozvole za rad kao administrator, što joj omogućava da preuzme banku u momentu kad joj NBS oduzme dozvolu za rad a pre pokretanja postupka likvidacije odnosno stečaja.

Dobrovoljni prestanak rada banke - Menjaju se ovlašćenja NBS kod dobrovoljnog prestanka rada banke u članu 131, tako što NBS više ne daje saglasnost na sprovođenje postupka dobrovoljne likvidacije banke niti vrši nadzor nad sprovođenjem tog postupka, već daje saglasnost banci na odluku skupštine banke o prestanku rada. Predviđena je dokumentacija koju banka dostavlja NBS uz zahtev za dobijanje saglasnosti na odluku skupštine o prestanku rada i to: odluka skupštine banke o prestanku rada banke i bezuslovna, neopoziva i na prvi poziv plativa bankarska garancija, izdata od strane prvoklasne banke u iznosu kojim se garantuje pokriće svih obaveza banke koja prestaje sa radom, a izdata u korist Agencije, kao i mogućnost za NBS da traži i drugu dokumentaciju potrebnu za razmatranje ovog zahteva.

Ako NBS ne dâ saglasnost na odluku skupštine banke o prestanku rada, iz razloga što banka nije dostavila propisanu dokumentaciju u skladu sa stavom 2. ovog člana, NBS će istovremeno banci oduzeti dozvolu za rad i imenovati Agenciju za administratora, u skladu sa zakonom kojim se uređuje stečaj i likvidacija banaka. NBS rešenje kojim se daje saglasnost NBS na odluku skupštine banke o prestanku rada banke, kao i rešenje o oduzimanju dozvole za rad banci dostavlja Agenciji najkasnije narednog radnog dana od dana donošenja tih rešenja.

Odluka o prestanku rada banke proizvodi pravno dejstvo danom donošenja rešenja o davanju saglasnosti na odluku skupštine banke o prestanku rada.

Kaznene odredbe - Izmenjene su i dopunjene

grounds for removal from office of a board of directors or executive board member, to a case when the bank fails to allow the National Bank of Serbia to conduct control of the bank's solvency and legality of its business operations.

In Article 119 para 1 of the Law on Banks, the provision is amended which pertains to the cases when NBS may give an order to the bank to remove from office member of the board of directors or executive board, which serves for harmonisation with the amended provisions prescribing grounds for refusal of requests for persons proposed to the board of directors, i.e. executive board membership, in the sense that the National Bank of Serbia shall issue an order for the removal from office of the board of directors or executive board of the bank member, if such a person is a convicted felon with the legally binding sentence for a criminal offence on unconditional jail term, or a person with a legally binding conviction for a criminal offence rendering him incompatible for performance of these functions.

Article 112 of the Law on Banks is supplemented and now the provisions under para 3 allow NBS to suspend the procedure of bank control, if determined that the bank acted in concordance with the measures pronounced by the NBS, i.e. if it had failed to comply - NBS to pronounce a new measure again, in accordance with criteria prescribed in Article 120 of the Law on Banks.

Grounds for revoking bank operating licence - Grounds are amended for mandatory withdrawal of the bank operating licence in Article 130 of the Law, when the NBS:

1. determines that the bank, which is not a systemically significant bank, is a critically undercapitalised bank, except in the case when the bank is in receivership;
2. determines that the shareholders of the bank in receivership have failed to compile the action plan within the prescribed time;
3. finds that the action plan, from item 2) of this paragraph, can not serve for elimination of irregularities in the bank operations, nor can it improve its financial status;
4. finds that in the bank under receivership, action plan approved by the National Bank of Serbia, is not being implemented;

5. determines that the activities conducted in accordance with the action plan approved by the NBS, fail to achieve improvement in the financial status of the bank under receivership;
6. if the bank suspends, continuously, taking of deposits or approval of credits, except if so ordered by the corrective measure of the NBS; and
7. if in the bank under receivership, until the expired deadline, reasons causing receivership have not been eliminated.

Moreover, in para 2, the scope of grounds for optional withdrawal of the bank operating licence is extended and the following added:

1. **11a)** when the NBS shall determine that the bank will be unable to settle its liabilities to depositors and other creditors;
2. **11b)** when the NBS shall determine that the bank is engaging in irrational spending of funds (assets) in actions opposed to the regulations or standards of conscientious banking practices, that may result in deterioration of its financial situation;
- 11c) when the banks fails to allow NBS to conduct control of the solvency and legality of its operations.

Certain amendments are also made for harmonisation with the Law regulating bankruptcy and liquidation of banks and insurance companies. In para 6, it is prescribed that the Agency shall be nominated administrative receiver in the decree revoking bank operating licence, thus allowing it to take over the bank at the moment when the NBS has revoked bank's operating licence, and prior to initiating liquidation i.e. bankruptcy procedure.

Voluntary termination of bank operations

- NBS authorisations are being amended in Article 131 in cases of voluntary termination of bank operations, prescribing that the NBS shall no longer approve implementation of the procedure of voluntary bank liquidation, and neither shall supervise implementation of such a procedure, but shall grant its approval to the bank's decision, adopted at the bank assembly meeting, on termination of work. Documentation required from the bank to be submitted to the NBS, together with the request for approval of the assembly's decision on

kaznene odredbe Zakona o bankama, pre svega zbog toga što je uočeno da određene aktivnosti propisane kao privredni prestupi banke i drugih pravnih lica nemaju težinu drugih, te su takva dela kvalifikovana kao prekršaji. Takođe, prekršaji su revidirani i njihove formulacije su precizirane kako se u praksi ne bi dogodilo da banke odgovaraju za dela čija je društvena štetnost zanemarljiva. Zbog stupanja na snagu Zakona o odgovornosti pravnih lica za krivična dela - u naš pravni sistem uvedena je mogućnost da ova lica odgovaraju za krivična dela i time je prestala potreba da se neovlašćeno bavljenje primanjem depozita, odnosno davanjem kredita ili izdavanjem platnih kartica, kao i neovlašćeno korišćenje reči „banka” ili izvedenice od te reči u poslovnom imenu, sankcionišu kao privredni prestupi.

Rok za usklađivanje organizacije i akata banaka - Utvrđen je rok za usklađivanje organizacije i akata banaka sa odredbama čl. 9. do 12. i čl. 17, 19, 21. i 22. ovog zakona i to najkasnije do 1. jula 2011. godine. NBS je ovlašćena da prema bankama koje to usklađivanje ne izvrše do ovog roka, preduzme mere iz svoje nadležnosti.

NBS će odredbe propisa donetih na osnovu Zakona o bankama, a koje su u suprotnosti sa ovim zakonom uskladiti u roku od šest meseci od dana njegovog stupanja na snagu.

Sporazum o utvrđivanju kriterijuma za određivanje sistemski značajne banke, NBS i ministarstvo nadležno za poslove finansija zaključice u roku od tri meseca od dana stupanja na snagu ovog zakona.

termination of work, is the following: decision of the bank's assembly to terminate bank operations, and unconditional, irrevocable and at the first-call payable bank guarantee, issued by the prime bank, in the amount which shall guarantee that all the liabilities of the bank terminating its work shall be covered, the said guarantee issued in favour of the Agency. The option is prescribed allowing NBS to request additional documents if necessary for ruling on this application.

If the NBS shall refuse to grant its approval of the assembly's decision on termination of work of the bank, on the grounds that the bank has failed to submit documentation prescribed under para. 2 of this Article, NBS shall, simultaneously revoke bank operating licence and nominate the Agency as administrative receiver, in accordance with the Law regulating bankruptcy and liquidation of banks. Decree issued by the NBS approving the assembly's decision on termination of bank operations, and the decree revoking bank operating licence, shall be submitted to the Agency not later than the next working day from the day of passing the said decrees.

Decision on terminating bank operations shall come into force and effect on the same day the decree is passed, approving the assembly's decision on termination of bank operations.

Penal clauses - Penal clauses of the Law on Banks are amended and supplemented, primarily because it was observed that certain activities prescribed as corporate offence of banks, and those of other legal entities, do not carry the same weight, thus such acts

being qualified as minor offences. In addition, minor offences were revised and their wording specified in more detail in order to avoid for the banks, in actual practice, to be held responsible for acts of negligible social detriment. With the Law on Liability of Legal Entities for Criminal Acts now in force - the option was introduced in our legal system for these persons to be held liable for criminal offences, thus eliminating the need for the persons engaged in unauthorised taking of deposits, i.e. granting credit facilities or credit cards issuing, and also those unlawfully using the term "bank" or derivatives of this term, in their business title, to be sanctioned for corporate offence.

Time for harmonisation of bank organisation and enactments - Time is set for harmonisation of organisation and enactments of banks with the provisions under Articles 9 to 12, and Articles 17, 19, 21, and 22 of this Law until 1 July 2011, at the latest. NBS is authorised to undertake measures within its competencies against banks which should fail to complete said harmonisation by this deadline.

NBS shall harmonise regulatory provisions passed under the Law on Banks, which are now conflicting with this Law, within the period of six months from the day of its coming into force.

Agreement on setting up criteria for designating a bank to be deemed a systemically significant bank, NBS and the ministry in charge of financial affairs shall conclude within three months from the day of coming into force of this Law.