

# **Law on Bank Deposit Guaranty**

(Issued by the National Assembly on 15 April 1998; published in the State Gazette, issue 49 of 29 April 1998; amended, issues 73, 153 and 155 of 1998; amended, issue 54 of 1999)

## **Subject of the Law**

**Article 1.** This Law shall regulate the establishment, functions and operation of the Bank Deposit Guaranty Fund in Bulgaria (hereinafter referred to as 'the Fund'), and shall specify the circumstances that will give rise to payment of resources by the Fund and the procedure for paying the deposits up to the guaranteed amount.

## **Scope of the Law**

**Article 2.** (1) This Law shall apply to all banks legally licensed to take deposits.

(2) This Law shall also apply to all branches of foreign banks located in Bulgaria provided that the home country of the head office of such a bank has no deposit guaranty scheme, or if it has such a scheme, the scheme provides for a smaller guaranteed amount than the one prescribed in this Law, or the scheme is inapplicable to a bank's branches abroad.

(3) The entities under paras. 1 and 2 shall make pecuniary premiums to the Fund as prescribed herein.

## **Guaranteed Deposits**

**Article 3.** Deposits in levs and in foreign currency shall be guaranteed.

## **Size of the Guaranteed Amount**

**Article 4.** (1) The Fund shall guarantee the payment of funds held on a depositors' account with a bank regardless of the number and size of the deposits as follows:

1. for the amount up to BGL 2 million - 95 percent;
2. for the amount in excess of BGL 2 million - 80 percent, but not more than BGL 5 million.

(2) The above amounts shall include the interest accrued as at the date of the resolution of the Bulgarian National Bank under Article 23, para. 1.

(3) Article 1 shall not apply to persons who have acquired rights to a deposit as a result of disposition of the deposit following the BNB resolution under Article 23, para. 1.

## **Exceptions**

**Article 5.** (1) The guaranteed amount of bank deposits shall not be paid to:

1. persons who have been granted preferential interest rates in deviation from the terms and conditions announced by the bank which the bank is obliged to apply to all its depositors;
2. persons who own shares entitling them to more than 5 percent of the votes in the general meeting of the bank's shareholders;
3. members of the bank's management or supervisory board, or the board of directors respectively, procurators and members of its internal audit bodies;

4. physical persons who are partners in specialized auditing companies, selected or appointed in accordance with the procedure prescribed in law to certify the bank's financial statement;
5. spouses or relatives of direct or lateral lineage up to the second degree, including the persons under items 2, 3 and 4;
6. any bank whose deposits are in its name and on its account;
7. nonbank financial institutions as defined in Article 1, para. 5 of the Law on Banks;
8. insurers;
9. pension or insurance funds;
10. any investment intermediary whose deposits are in his name and on his account;
11. investment companies and privatization funds;
12. the government or government institutions;
13. municipalities.

(2) The exceptions under para. 1 shall be established as at the date of BNB resolution under Article 23, para. 1.

### **Determining the Size of Deposits**

**Article 6.** (1) The total amount of a bank's liability to a depositor shall be determined by adding up all depositor's deposits, including interest accrued as at the date of BNB resolution under Article 23, para. 1.

(2) When the depositor has obligations to the bank, the amount under Article 4, paras. 1 and 2 shall be reduced by the amount of his debts to the bank.

(3) In the event of a joint deposit, each person's portion shall be taken into account in establishing the total amount of that person's deposits in the bank. If it is not otherwise provided for in the deposit contract, it shall be assumed that the depositors' portions are equal.

(4) In the event of a deposit contract in favor of a third party, the person in whose favor the deposit has been opened (the beneficiary) shall be entitled to receive a payment from the Fund unless it is otherwise provided for in the contract. If there are more than one beneficiary, the joint deposit rules shall apply.

(5) In the event of a transformation of two or more banks through takeover or merger, the deposits held with these banks before the transformation shall be calculated, for the purposes of the deposit guaranty, separately for each bank within the six-month term under Article 263, para. 1 of the Law on Commerce.

### **Establishment and Status of the Fund**

**Article 7.** (1) A Bank Deposit Guaranty Fund shall be established.

(2) The Fund shall be a legal person, and its head office shall be in Sofia.

(3) (amended; State Gazette, issue 153 of 1998) The Fund shall be exempt from paying state or local taxes and fees only on deposit guaranty operations.

(4) The National Audit Chamber shall exercise control over the Fund's activities.

(5) The Fund shall be transformed, cease its activities or be liquidated by a law.

(6) In the event of liquidation of the Fund after repaying its obligations, the remainder of its property shall be distributed among banks in proportion to the premiums paid by them, except for these banks whose obligations to depositors are paid by the Fund.

### **Basic Functions of the Fund**

**Article 8.** The Fund under the conditions and the procedure prescribed in this Law shall:

1. determine and collect annual and entry premiums from banks;
2. invest its assets in accordance with Article 22, para. 2;
3. pay the guaranteed amount of deposits.

### **Fund Management. Representation**

**Article 9.** (1) The Fund shall be managed by a Management Board.

(2) The Management Board shall consist of five members - physical persons who shall be designated as follows:

1. (amended; State Gazette, issue 73 of 1998) the Chairperson of the Management Board - by the Council of Ministers;
2. the Deputy Chairperson – by the Bulgarian National Bank Managing Board;
3. one member – by a representative organization of commercial banks;
4. two members – jointly by the Chairperson and the Deputy Chairperson of the Management Board.

(3) The Management Board members shall have a degree in economics or law and professional experience for no less than 5 years in one of the following areas:

1. banking;
2. trade in securities;
3. accounting;
4. finance.

(4) The mandate of the Management Board shall be 4 years. The members of the Management Board may be reappointed without any restriction.

(5) The Management Board of the Fund shall meet at least once in three months. Its decisions shall be taken with a simple majority of all its members.

(6) Minutes shall be taken for the Management Board's decisions and they shall be signed by all members present.

(7) The Management Board shall adopt Rules of Procedure.

(8) The Chairperson of the Management Board shall represent the Fund at home and abroad.

(9) The Chairperson of the Management Board shall appoint administrative staff of the Fund whose structure, number, powers, obligations and remuneration shall be determined in accordance with the rules and regulations referred to in para. 7.

(10) The Management Board may recruit experts and form commissions to assist the Fund in its functions.

### **Conflict of Interest**

**Article 10.** (1) The following persons may not be members of the Fund's Management Board:

1. persons who have been members of executive or controlling bodies, or unlimited liability partners in companies that have been closed for insolvency with any creditors having been left unsatisfied;
2. persons who, in the 5 years preceding the decision on a bank's insolvency, were members of the bank's managing or controlling body;
3. persons who are spouses or relatives of direct or lateral lineage up to the second degree of a member of the Fund's Management Board;
4. persons who have been convicted of premeditated crime of a public character;
5. persons who have been deprived of the right to hold a position of financial responsibility.

(2) (amended; State Gazette, issue 54 of 1999) The Chairperson of the Management Board may not engage in other remunerative activity other than research and teaching.

(3) The Management Board members may not work for banks or nonbank financial institutions as defined in Article 1, para. 5 of the Law on Banks.

### **Terminating the Mandate of a Member of the Management Board**

**Article 11.** The mandate of a member of the Management Board shall be terminated before its expiry when it is established that:

1. he is in a circumstance of those specified in Article 10;
2. he has been physically or mentally unable to carry out his obligations for more than 6 months;
3. he has been engaged in a serious misconduct;
4. his activities impair the Fund's interests;
5. he has been absent in three or more successive meetings of the Management Board without good ground.

### **Powers of the Management Board**

**Article 12.** (1) The Management Board shall:

1. set in accordance with this Law and collect the entry and annual premiums from banks;
2. invest the Fund's resources in accordance with the requirements for safety and continual liquidity;
3. organize the payment of the guaranteed amounts of deposits in accordance with this Law;
4. approve the annual report on the Fund's activities and present it to the Council of Ministers, the Bulgarian National Bank and the National Audit Chamber;
5. approve, by 31 March each year, the annual balance sheet for the preceding year and publish it in the State Gazette;
6. (amended; State Gazette, issue 54 of 1999) approve the annual budget for the Fund's administrative expenses together with a report on its performance and present it for approval to the Managing Board of the Bulgarian National Bank. The approved budget and report on its performance shall be presented to the National Audit Chamber;
7. prepare draft regulations for the implementation of this Law and present them to the Bulgarian National Bank for discussion and approval.

(2) On demand of the Fund's Management Board, the Deputy Governor heading the Banking Supervision Department at the Bulgarian National Bank shall require from commercial banks any documents necessary to make an unbiased evaluation on the existence and status of claims for

guaranteed deposits. In these circumstances the restrictions under Article 52 of the Law on Banks regarding bank secrecy shall not apply.

(3) The Fund's Management Board may demand from the Deputy Governor heading the Banking Supervision Department at the Bulgarian National Bank that limited examinations be conducted in banks and the results be presented to the Fund.

(4) The Management Board may publish information on the Fund's activities which does not contain data of confidential banking or commercial character.

### **Disclosing Conflicts of Interest. Confidentiality**

**Article 13.** (1) Any member of the Fund's Management Board and its administrative staff shall be bound to disclose in writing to the Management Board any trading, financial or other business interest which impairs the Fund's interests.

(2) In performing their obligations, the persons under para. 1 shall be bound to place the Fund's interests before their own interests.

### **Sources of the Fund's Resources**

**Article 14.** (1) The sources of the Fund's resources shall be:

1. initial (entry) premiums from banks;
2. annual premiums from banks;
3. proceeds from the investment of resources raised by the Fund;
4. proceeds received by the Fund from a bank's property in case of subrogation;
5. other sources (loans, donations, foreign assistance, etc.).

(2) The Bulgarian National Bank shall be the depository of the Fund's resources.

### **Entry Contributions by Banks**

**Article 15.** (1) The entry contribution of each bank shall be a single payment to be deposited within 30 days from the date of its registration in the Commercial Register and shall be the amount of one percent of the bank's registered capital but no less than BGL 100 million.

(2) The entry contribution of a branch of a foreign bank shall be one percent of the minimum capital required for a bank but no less than BGL 100 million, and shall be paid within the time limit under para. 1.

(3) In the event of failure to pay the entry contribution within the specified term, the Fund shall charge, for the term of delay an interest on the amount due equal to the interest rate as provided for by Law.

(4) The entry contributions of banks shall be accounted for as an expense.

### **Annual Premium Contributions and Deposit Base**

**Article 16.** (1) Each bank shall make into the Fund an annual premium contribution in levs equal to 0.5 percent of the total amount of the deposit base, determined as of 31 December of the preceding year.

(2) The deposit base shall include all deposits attracted by the bank except for the ones under Article 5, para. 1, items 6 through 13.

(3) The amount of the premium paid on the foreign currency denominated deposits of a bank shall be determined at the exchange rate of the Bulgarian National Bank on the date of payment.

(4) The amount of the premium contribution to be paid by a newly licensed bank in the relevant year shall be calculated proportionally to the time period following the bank's entry in the Commercial Register until the end of the year, whereas the days of the year shall be 360.

(5) Banks, including branches of foreign banks, shall pay the premium contributions due within 31 March of the following year.

(6) In the event of failure to pay the premium contributions within the term set, the provision of Article 15, para. 3 shall apply.

(7) The annual premium contributions of banks shall be accounted for as an expense.

### **Nonrefundable Contributions**

**Article 17.** The contributions made by banks are not subject to refunding, also in case of dissolution of banks, unless otherwise provided for by this Law.

### **Financing the Fund within the Shortfall of Resources**

**Article 18.** (1) In the event resources in the Fund are insufficient to cover its liabilities under this Law, by a decision of the Management Board, the shortfall may be covered in the following order:

1. by requiring from banks to pay in advance annual premium contributions, using as a basis the last day of the preceding month;
2. by increasing the annual premium;
3. by borrowings.

(2) The amount paid in advance under para. 1, item 1 shall be deducted from the annual premium contribution due by the bank for the next year. The amount that has been overcharged shall be subject to refund within the terms under Article 16, para. 5.

(3) The maximum amount of the increased premium contribution under para. 1, item 2 may not exceed 1.5 percent of the deposit base, as determined under Article 16, para. 2.

(4) In the event of deficit of resources, after the implementation of para. 1, items 1 and 2, the Fund may borrow:

1. under the conditions and procedures provided for in the Regulation governing the Fund's operation;
2. from the budget after a decision by the National Assembly to this effect.

### **Consequences of Default on Annual Premium Payments**

**Article 19.** In the event a bank has failed to pay the premium due for a period of three months, the Fund's Management Board shall advise the Bulgarian National Bank for taking the action under Article 21, para. 2 of the Law on Banks.

### **Reduction of the Liabilities for Payment of Premium**

**Article 20.** (1) Where the resources accumulated in the Fund exceed 5 percent of the total amount of deposits with banks, the Management Board may take a decision to reduce the amount of premiums paid in.

(2) Payment of annual premiums in their full amount shall be resumed as soon as the resources in the Fund fall under the amount specified in the preceding para. 1.

(3) The decision for the payment of reduced premium contributions in the cases under para. 1 shall not apply to banks that for the previous 12 months have been subjected to the supervisory measures under Article 65, para. 2 of the Law on Banks.

### **Providing Information to the Fund**

**Article 21.** (1) Upon request by the Management Board of the Fund, the BNB shall provide all the information available to it on the amount of bank deposits and required for calculating the contributions to be paid by banks, and shall also provide full current information on the financial status of banks in view of assessing the risk associated with the implementation of the deposit guaranty system.

(2) The Management Board of the Fund may demand from banks to provide information which is necessary for the pursuit of its activities.

(3) Members of the Management Board and other persons engaged by the Fund are not allowed to disclose personally or through other persons any information which represents a banking, commercial or other secret protected by law, which has become known to them while carrying out their duties.

### **Use of the Fund's Resources**

**Article 22.** (1) The Fund's resources may be used only for payments on deposits up to the amounts guaranteed by the system in the cases provided for by this Law, for repayment of principal and interest on loans received by the Fund, in the cases under Article 18, para. 4, and for the operating expenses incurred by the Fund.

(2) The Fund's resources shall be invested in:

1. government securities issued or guaranteed by the government;
2. short-term deposits with commercial banks that are authorized dealers of government securities;
3. deposits with the Bulgarian National Bank.

### **Terms and Procedures for Reimbursement of Guaranteed Deposits**

**Article 23.** (1) The Fund shall pay the liabilities of a particular bank to its depositors up to the amount guaranteed, in the cases where the Bulgarian National Bank has withdrawn the banking license granted to the commercial bank.

(2) The Fund shall pay the guaranteed amount of the deposits via a commercial bank determined by its Management Board.

(3) Within 15 days from the resolution of the Bulgarian National Bank under para. 1 above, the appointed conservator, liquidator, or assignee in bankruptcy shall be obliged to submit to the Fund's Management Board written information about the deposits held with the bank.

(4) Within 15 days from the receipt of the information and documentation under para. 3, the Fund's Management Board shall publish in at least two major dailies information about the date after which depositors shall be paid from the Fund, and the name of the bank which will effect these payments.

(5) Payments from the Fund shall begin no later than 45 days from the date of the resolution of the Bulgarian National Bank under para. 1.

(6) For foreign currency denominated deposits, the depositor shall be paid the lev equivalent of the guaranteed amount at the exchange rate of the Bulgarian National Bank on the initial day of payment of guaranteed deposits.

(7) A bank's liability to its depositors shall be reduced proportionally by the amounts paid to depositors.

(8) The Management Board of the Fund shall regularly notify the liquidator or the assignee in bankruptcy about the amount paid out of the Fund to any depositor.

(9) Depositors' claims in excess of the amount received from the Fund shall be settled from the bank's property, pursuant to current legislation.

(10) The Bulgarian National Bank shall issue a Regulation on the enforcement of this Article.

### **Subrogation**

**Article 24.** (1) From the date of the decision made by the Bulgarian National Bank under Article 23, para. 1, the Fund shall subrogate the rights of depositors to the bank within the amounts guaranteed.

(2) The Fund shall owe no interest on the guaranteed amounts.

### **Restriction on Advertising**

**Article 25.** Banks covered by the deposit guaranty system shall not advertise de- posit guaranty above the limits provided for by this Law.

### **Additional Provision**

**§ 1.** Within the meaning of this Law:

1. 'Deposit' shall be the funds kept on a bank account, irrespective of its type, opened in the name of one or more persons, or credit balances ensuing from temporary positions as the result of usual banking transactions, whereas the bank is obliged to repay such funds or balances to the depositors in pursuance of the statutory and contractual provisions applicable.

2. 'Joint deposit' shall be a deposit held by two or more persons, the payment of which may be claimed by more than one person.

3. 'Depositor' shall be a person who, pursuant to the statutory and contractual provisions applicable, has the right to receive the funds on the bank account or the credit balances ensuing from temporary positions as the result of usual banking transactions.



## **Transitional and Final Provisions**

**§ 2.** (1) This Law shall revoke the Law on State Protection of Deposits and Accounts with Commercial Banks in respect whereof the Bulgarian National Bank Has Petitioned the Institution of Bankruptcy Proceedings (published in the State Gazette, issue 46 of 1996; amended, issue 90 of 1996).

(2) (repealed; State Gazette, issue 54 of 1999)

**§ 3.** The wording ‘the Bank Deposit Guaranty Fund’ shall be added after ‘other government agencies’ in Article 39, para. 1 of the Law on the Bulgarian National Bank (State Gazette, issue 46 of 1997).

**§ 4.** (amended; State Gazette, issue 54 of 1999) (1) Where court proceedings for insolvency were petitioned for a bank, the Governor of the Bulgarian National Bank shall approach the bodies of preliminary proceedings, requesting a preliminary examination on the data collection for committed crime, and levy a distraint on bank accounts and impose injunction on the property of the members of the Supervisory and Management Boards, respectively of the Board of Directors, and of the procurators.

(2) Distraint on bank accounts shall be levied through a distraint notice which shall be sent to the respective banks and persons under para. 1.

(3) Security measures under para. 1 shall be abrogated where within six months after the petition for institution of bankruptcy proceedings no notice on the institution of preliminary proceedings have been sent to the Bulgarian National Bank by the bodies of preliminary proceedings, or persons authorized to manage and represent the bank, respectively the assignees in bankruptcy, have not sent a notice on the claims laid against persons under para. 1.

**§ 5.** (1) All funds raised under Regulation No. 1 of 1995 on Bank Deposit Insurance, adopted by Resolution No. 396 of the BNB Managing Board (published in the State Gazette, issue 6 of 1996; amended, issues 21 and 37 of 1996) shall be transferred to the hereby newly established Bank Deposit Guaranty Fund.

(2) Entry contributions made by banks under Regulation No. 1 shall be deemed as entry contributions pursuant to Article 15 of this Law.

**§ 6.** The enactment of this Law shall be assigned to the Bulgarian National Bank.