

LAW NO. 2/67 OF 16 JANUARY 1967

Subjecting banks in suspension
of payment to special provisions
(with its amendments)

The Chamber of Deputies has adopted,
The President of the Republic promulgated the law worded as follows:

Article 1:

Any bank operating in Lebanon and in suspension of payment is submitted to the provisions of the present law. .

Article 2:

As soon as a bank's suspension of payment has been established, the Governor of the Bank of Lebanon shall request the competent tribunal to enforce the provisions of the present law on the bank concerned and inform the Ministers of Justice and Finance of this fact.

To apply provisions of the above article, the bank is considered to be in suspension of payment if it stands in one of the following cases:

- 1- If it proclaims, itself, the suspension of payments,
- 2 - If it does not settle, at the expiry of maturity, a debt contracted with the Bank of Lebanon.
- 3 - If it draw a cheque on the Bank of Lebanon, without having sufficient funds.
- 4 - If it does not provide sufficient funds to cover and adverse balance resulting from clearing House operations.

Article 3:

Any bank may require the competent tribunal to apply the provisions of the present law enforced upon it, in those cases stipulated to in article (459) of the Code of Commerce.

Article 4:

Any creditor may require the competent tribunal to apply the provisions of the present law enforced in the two cases stipulated to in article (489) of the Code of Commerce.

Article 5:

Within 48 hours of the presentation of the request, in the two cases stipulated in articles No. (2) and (3), the tribunal is required to designate, in Council Chamber, a provisional manager, expert in banking and financial matters, charged to dispatch the bank's current operations and to take measures of conservation, all under the supervision of the said

tribunal. The designation of the provisional manager is left to the tribunal's appreciation in the case stipulated to in article (4).

The provisional manager's mission comes to an end upon the setting up of the committee referred to in article No. (7) of the present law.

Article 6:

The tribunal deals with the request in Council Chamber and, if the request proves receivable, it delivers a provisional executory ruling, declaring the suspension of payments and setting a provisional date thereto, after consultation with the Governor of the Bank of Lebanon and an oral hearing of the representative of the bank concerned. The judgement equally involves the dismissal of the members of the board of directors of the defaulting bank., and the dismissal of the local management of foreign banks operating in Lebanon in case one of these should suspension its payments.

Article 7:

The competent tribunal appoints a Managing Committee, of between six and ten members, out of whom it nominates a chairman. The chairman may in no case be a member of the Committee proposed by the Ministry of finance or the Bank of Lebanon.

Article 8:

The committee stipulated to in the preceding article is formed in the following manner:

- I - One member proposed by the Minister of Finance.
- 2 - One member proposed by the Governor of the Bank of Lebanon.
- 3 - One or several members selected from among persons with experience of banking and financial matters, designated by the tribunal out of names compiled by the Central Board of the Bank of Lebanon.
- 4 - One or more members representing the creditors.
- 5 - One or more members representing the shareholders.

May not be eligible for membership to this committee, any of the defaulting bank's debtors, any present or former member of its board of directors, or any member or employee or debtor of one of the subsidiary companies.

The number of the creditors' and shareholders' representatives may not be less than half of the Committee's total membership. They are selected in the following manner:

The tribunal publish in the Official Gazette, diffuses and publishes by all the means of media it shall determine, a notice inviting the creditors and shareholders wishing to file application for membership to the managing committee, to announce their names in writing to the provisional manager, within a time-limit of two weeks, commencing from the date of publication in the Official Gazette. Thereupon the provisional manager presents to the tribunal a list with the candidates names. Out of this list the tribunal selects the members taken from among the creditors and shareholders. The provisional

manager continues to assume his functions under the supervision of the tribunal until the designation of all the committee's members.

Article 9:

The committee meets upon its president's summons and passes its resolutions according to the rules set down in the Code of Commerce regarding the board of directors of joint-stock companies. In the event of a tie, the president's vote overpowering.

Article 10:

The committee discharge the duties of the board of directors and, if need be, those of the ordinary general meeting. At the same time, it represents the bulk of the defaulting bank's creditors, taking such adequate measures as may safeguard the interests of the rightful claimants. Its management encompasses the bank and its branches. The committee takes those measures that it deems necessary to safeguard the bank's foreign branches, all or a number of them, and their assets, wholly or partially, on condition that this is in the interest of all the creditors, and with the tribunal's approval. To this end, the Bank of Lebanon is authorised to advance to the interested bank the sums necessary for this purpose and in excess of the amounts the latter holds, against such guarantees as the Bank of Lebanon may deem adequate. Such advanced sums shall be refunded to the Bank of Lebanon as a matter of priority.

The committee is vested the right to conclude agreements designed to enable the bank to resume its activities by means of financing or any other measures, on condition that such agreements be affected with the tribunal's approval.

If the committee considers that the bank can resume its activities through a capital increase, it convenes the shareholders to an extraordinary general Meeting to decide such increase on condition that, in so doing, it conforms to the rules and procedures stipulated in the Code of Commerce.¹

Article 11:

The creditors and rightful claimants, excepting holders of deposits, are bound to put before the Managing Committee their debts and claims in statements supported by documentary evidence within three calendar months of the date of publication, in the Official Gazette, of the Court ruling declaring suspension of payment subject to forfeiture of the debt or claim under the status of limitations, if delay is not due to force majeure or justified by a legal excuse left to the appreciation of the tribunal. As for the confirmation of debts and disputed deposits, the provisions of the Code of Commerce (Title pertaining to insolvency) are applied, and the committee advises the creditors without delay of the sums posted to their assets.

Article 12: (as amended by Decree-Law No. 44 of 5 August 1967):

¹ Please read article No. 5 of Law No. 110 of 7 November page No 229.

If within a maximum time-limit of six months the committee is aware that the bank is in a position which enables it to resume its activities, it brings the case before the tribunal which, according to the advice of the Bank of Lebanon, passes a ruling authorising the convening of shareholders to a general meeting for the election of a new board of directors. The Committee's mission comes to an end after this election.

If it appears that the bank cannot resume its activities, it is put under liquidation by the court's ruling upon the request of the Managing Committee. This ruling shall set the date of the suspension of payments in a definitive manner and shall be published in accordance with the same procedure as governs adjudication in insolvency. Shall be in charge of the winding-up operations a Liquidation Committee of one chairman and five members appointed by the tribunal in the following manner:

- Three representatives of creditors.
- One representative of shareholders.
- One finance or bank expert.
- One Jurist.

Cannot be appointed on this committee any of the defaulting bank's debtors, any present or former member of its board of directors, or any debtor, member or employee of its subsidiary companies.²

If the six-month period runs out and the committee has not presented its report, the tribunal shall call upon it to present it within a week, if this time-limit expires and the report has not been presented, the tribunal shall decide liquidation.

The provisions of article (9) of the present law apply to this committee.

In case committee does not submit its report within the six-month timelimit dating from its designation, or in case when report submitted establishes the impossibility for the bank to pursue its activities, it is possible to designate by decree adopted by the Council of Ministers, a committee composed of-

- The Governor of the Bank of Lebanon Chairman
- The Chairman of the State Council
- The Director-General of Finance at the Ministry of Finance Members
- A Jurist
- A financial or economic expert proposed by the Minister of Finance.

The committee pursues, for a period of two months, the mission of the previous committee. The framework of its prerogatives is widened, by vesting it with the powers of the extraordinary general meeting and by empowering it to seek solutions likely to ensure the interests of the rightful claimants through the best and fastest means, after consultation of the reports and documents concerning the situation of the bank and verification of their authentic character. To this end, the committee is entitled to effect

² Please read articles (2) and (5) of Decree Law No. 44 of 5 August 1967 page 84,85,86.

contacts and take steps designed to find one or several acquires of the banking establishment of its branches or of its shares.³

In case the acquires have been found, the necessary agreements for the transfer of the banking establishment are established, as well as those necessary for the compulsory conveyance of the shares representing the capital of the banking establishment. In the latter event, the old shares are cancelled, a new document is established in their place, conferring upon its holder the right to receive the balance of the net income, if such a balance exists, and guaranteeing the execution of the acquires obligations and lay it in front. The competent Court of primary jurisdiction is to adjudicate these agreements within a time-limit of one month dating from the day they have been submitted to it. The Court order is final, and not open to appeal or to any other channel of recourse.⁴

Article 13:

The movable and immovable assets of natural persons sitting on the board of directors of the defaulting bank, all persons empowered to sign and the former account commissioners, as well as the movable and immovable assets of (natural) persons members of the board of directors, persons empowered to sign, and former account commissioners who have assumed the bank's management or the control of its accounts, in the course of the 18 months preceding the declaration of defaulting, are subject to conservatory seizure without it being necessary to file a legal case in confirmation of the seizure, so as to guarantee the responsibilities incumbent upon them. The distrained parties keep the use of these assets in conformity with article (623) of the Code of Civil Procedure.

The persons mentioned in the preceding article may apply to the competent court for the lifting of the seizure or its limitation on condition that the request is made in the presence of the Managing Committee. In all circumstances, seizure is officially lifted after a period of two months dating from the court's ruling declaring suspension of payments, unless otherwise decided by the court.

The aforementioned persons are required to submit a declaration to the Committee, listing all the assets they owned one year before the bank defaulted in payment, within one month of the ruling which placed the bank under provisional management. Should the distrained parties neglect to declare their assets or conceal them, they are subject to the term of imprisonment provided by article (674) amended of the Code of Civil Procedure.⁵

Article 14:

³ Please read article (4) of Decree Law No. 44 of 5 August 1967 Page No. 86.

⁴ Please read article (2) and subsequent one of Decree Law No. 44 of 5 August 1967 Page No. 84,85

⁵ Please read article (6) of Decree Law No. 110 of 7 November 1991 Page No.231,232.

The department of the Public Prosecutor, or the provisional manager, or the Managing Committee must apply to the competent judicial authority to file a suit against the persons mentioned in the preceding article, in conformity with the provisions of the Code of Commerce relating to insolvency concerning their civil and penal responsibilities.

Article 15:

All persons mentioned in article (13), by accepting the functions entrusted to them, are considered as having relinquished making good their right under the Law of 3 September 1956 regarding banking secrecy, as soon as the bank has stopped payments.

Banks are required, within one month of the announcing of the suspension of payment, in the official gazette to submit to the provisional manager or to the Managing Committee a statement of the assets of the aforementioned persons, failing which the banks' responsible persons are under the penalty of imprisonment provided by article (674), amended, of the Code of Civil Procedure. These assets are considered ipso jure distrained in their hands.

Article 16:

Upon his appointment, each of the provisional director and the Chairman of the Managing Committee replaces the Bank's manager in respect of the depositors and debtors, in all the duties and responsibilities initially accorded to the Bank's manager, by virtue of Law of 3 September 1956 relating to banking secrecy.

Article 17:

The remuneration of the provisional manager, and the Managing Committee and of the liquidation committee are determined by the competent tribunal's ruling, they are settled, alongside all other expenditures chargeable on the bank concerned, and are listed among all the expenses made necessary by the managing and liquidation operations, provided that the remunerations correspond to the activities assessed by the tribunal, the latter being unauthorised to take percentage into consideration.

Article 18:

It is part of the liquidation committee's duties proceed with the sale and liquidate of the establishment's assets, according to the means it deems proper to adopt, and to conclude transactions, on condition that all this be effected with the tribunal's approval.

Article 19:

Dating from the filing of the application to the competent tribunal, the provisions of article (464) of the Code of Commerce are enforceable and the creditors are no longer authorised to petition for an adjudication of insolvency of the bank concerned.

Article 20:

For all is not stipulated in the present law and which is not contrary to its provisions, all the provisions of the Code of Commerce relative to procedure and the rules applicable oil the adjudication of insolvency and the consequences resulting from such adjudication remain in force in respect of defaulting banks. Likewise, and in the same conditions, the enunciated rules are enforceable, in case of the proclamation of the creditors club, when the bank is placed under liquidation.

The provisions relating to the penal and civil responsibility of the members of the board of directors, of the supervisory commissioners, of the auditors, and of all responsible persons in the batik remain enforceable.

Article 21:

The present law comes into force upon its publication in the Official Gazette. Its provisions apply to matters submitted to tribunals after I" October 1966 and which have not yet been the object of an executory ruling.

Sin El-Fil, 16 January 1967
Signed: Charles Helou

By the President of the Republic
The President of the Council of Ministers
Signed: Raehid Karamah

The Minister of Finance
Signed: Rachid karamah