



On approval of the Rules for transfer of assets and liabilities of the insolvent bank to the bank acquirer by the temporary bank management administration (temporary manager of a bank), as well as the transfer of assets and liabilities of the bank, deprived of licenses for all banking and other operations to the bank-acquirer by the temporary administration (temporary administrator) of the bank until the court decision on the forced liquidation comes into force

Unofficial translation

Resolution of the Board of the National Bank of the Republic of Kazakhstan dated January 31, 2019 No. 9. Registered in the Ministry of Justice of the Republic of Kazakhstan on February 13, 2019 No. 18303.

Unofficial translation

In accordance with the Law of the Republic of Kazakhstan dated August 31, 1995 “On banks and banking activities in the Republic of Kazakhstan”, the Board of the National Bank of the Republic of Kazakhstan **RESOLVES**:

1. To approve the attached Rules for the transfer of assets and liabilities of the insolvent bank to the bank-acquirer by the temporary bank management administration (temporary manager of a bank), as well as the transfer of assets and liabilities of the bank, deprived of a license to conduct all banking and other operations to the bank-acquirer by the temporary administration (temporary administrator) of the bank before the court decision on the forced liquidation comes into force.

2. To recognize as invalid:

1) the resolution of the Board of the Agency of the Republic of Kazakhstan on regulation and supervision of the financial market and financial organizations dated August 5, 2009 No. 176 “On approval of the Rules for simultaneous transfer of assets and liabilities of a bank, deprived of a license to conduct banking operations, to another (other) bank (banks)” (registered in the Register of state registration of regulatory legal acts under No. 5770, published on October 2, 2009 in the newspaper “Yuridicheskaya gazeta” No. 150 (1747);

2) paragraph 3 of the List of regulatory legal acts of the Republic of Kazakhstan on regulation, control and supervision of the financial market and financial organizations, which are amended and supplemented, approved by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated May 27, 2015 No. 93 “On amendments and additions to some regulatory legal acts of the Republic of Kazakhstan on regulation, control and supervision of the financial market and financial organizations” (registered in the Register of state registration of regulatory legal acts under No. 11670, published on July 30, 2015 in the legal information system "Әділет").

3. The Department of methodology of the financial market (Salimbaev D.N.) in the manner prescribed by the legislation of the Republic of Kazakhstan to ensure:

1) together with the Legal Department (Sarsenova N.V.), the state registration of this resolution in the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days from the date of the state registration of this resolution, its sending in the Kazakh and Russian languages to the Republican state enterprise on the basis of the right of economic management “Republican Legal Information Center” for official publication and inclusion in the Reference Control Bank of regulatory legal acts of the Republic of Kazakhstan;

3) placement of this resolution on the official Internet resource of the National Bank of the Republic of Kazakhstan after its official publication;

4) within ten working days after the state registration of this resolution, submission of information to the Legal Department on implementation of measures provided for in subparagraphs 2), 3) of this paragraph and paragraph 4 of this resolution.

4. The Directorate for protection of the rights of consumers of financial services and external communications (A.L. Terentyev) to ensure, within ten calendar days after the state registration of this resolution, the sending of its copy for official publication in periodicals.

5. Deputy Chairman of the National Bank of the Republic of Kazakhstan O. A. Smolyakova shall be authorized to oversee the execution of this resolution.

6. This resolution shall come into force ten calendar days after the day of its first official publication.

*Chairman of the
National Bank*

D. Akishev

Approved by the resolution of the
Board of the National Bank of the
Republic of Kazakhstan
dated January 31, 2019
№ 9

The Rules for transfer of assets and liabilities of the insolvent bank to the bank-acquirer by temporary bank management administration (temporary manager of a bank), as well as the transfer of assets and liabilities of a bank, deprived of a license for all banking and other operations to the bank-acquirer by the temporary administration (temporary administrator) of the bank before the court decision on the forced liquidation comes into force

Chapter 1. General provisions

1. These Rules for transfer of assets and liabilities of the insolvent bank to the bank-acquirer by temporary bank management administration (temporary manager of a bank), as well as the transfer of assets and liabilities of a bank, deprived of a license for all banking and other operations to the bank-acquirer by the temporary administration (temporary administrator) of the bank before the court decision on the forced liquidation comes into force (hereinafter - the Rules) are developed in accordance with the Law of the Republic of

Kazakhstan dated August 31, 1995 “On banks and banking activities in the Republic of Kazakhstan” (hereinafter - the Law on Banks) and determine the procedure for the transfer of assets and liabilities of the insolvent bank to the bank-acquirer by temporary bank management administration (temporary manager of a bank), as well as the transfer of assets and liabilities of a bank, deprived of a license for all banking and other operations to the bank-acquirer by the temporary administration (temporary administrator) of the bank before the court decision on the forced liquidation comes into force.

2. Concepts used in the Rules:

1) operation for the transfer of assets and liabilities - an operation for the simultaneous transfer of assets and liabilities of an insolvent bank or a bank deprived of a license to conduct all banking and other operations, before the court decision on forced liquidation enters into legal force, to the acquiring bank;

2) potential acquiring bank - a second-tier bank that has accepted an offer to participate in the transaction to transfer all or part of the bank’s assets and liabilities;

3) temporary administration - temporary administration for managing the bank (temporary bank manager) at the conservation stage or temporary administration (temporary administrator) of the bank until the court decision on forced liquidation enters into legal force;

4) authorized body - an authorized body for regulation, control and supervision of the financial market and financial organizations.

Footnote. Paragraph 2 - as amended by the Resolution of the Board of the Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market dated March 30, 2020 No. 28 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

Chapter 2. Procedure for transfer of assets and liabilities of an insolvent bank to the bank-acquirer by temporary administration

3. The transfer of assets and liabilities is carried out by the temporary administration by the decision of the authorized body.

4. To transfer the assets and liabilities, the temporary administration searches for a potential bank-acquirer by sending a letter of invitation with the stamp “Strictly confidential” to the second-tier banks, meeting the requirements of paragraph 7 of the Rules, to participate in the transfer of assets and liabilities.

The letter indicates the estimated size of the transferred assets and liabilities of the insolvent bank.

5. Second-tier banks that have received a letter of invitation from the temporary administration to participate in the transfer of assets and liabilities, within 5 (five) working days from the day of its receipt, send a response with the stamp “Strictly confidential” to the temporary administration indicating consent or refusal to participate in the transfer of assets and liabilities.

If they agree to participate in the transfer of assets and liabilities, the potential banks-acquirers indicate in the response the percentage ratio of the accepted assets to the accepted liabilities.

6. Not later than 5 (five) working days from the date of expiry of the deadline for submission of response by the banks, the temporary administration considers applications in an arbitrary form for participation in the transfer of assets and liabilities (hereinafter referred to as the application), submitted by potential banks-acquirers and following the results of their consideration:

1) selects the bank-acquirer (banks-acquirers), meeting (corresponding to) the requirements of paragraph 7 of the Rules, which is drawn up by a protocol decision;

2) signs an agreement (liability) with a potential bank-acquirer (potential banks-acquirers) on confidentiality and non-disclosure of information received in connection with the consideration of the possibility of participation in the transfer of assets and liabilities.

7. A potential bank-acquirer meets the following requirements:

- 1) is a member of the mandatory deposit guarantee system;
- 2) has a license of an authorized body for accepting deposits, opening and maintaining bank accounts of individuals, legal entities, conducting bank loan operations, cash transactions;
- 3) ensures compliance with prudential standards and other mandatory norms and limits, established for banks, on the last reporting date and taking into account the forthcoming transfer of assets and liabilities;
- 4) has branches for servicing customers of an insolvent bank;
- 5) does not have existing administrative penalties for administrative offences provided for in parts six and eight of Article 213, Article 227 of the Code of the Republic of Kazakhstan on Administrative Offenses dated July 5, 2014, existing supervisory response measures (except for advisory supervisory response measures) and sanctions applied by the authorized body, on the date of application.

Footnote. Paragraph 7 as amended by the Resolution of the Board of the Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market dated March 30, 2020 No. 28 (shall come into force ten calendar days after the day of its first official publication).

8. If there is one application, a potential bank-acquirer that meets the requirements of paragraph 7 of the Rules shall be recognized as the bank-acquirer.

If there are two or more applications, the temporary administration recognizes a potential bank-acquirer as a winner, which proposed a minimum percentage ratio between the liabilities and assets accepted.

If there are two or more potential banks - acquirers that offer the same minimum percentage ratio between the accepted liabilities and assets, the temporary administration

selects the potential bank - acquirer with the largest amount of assets on the last reporting date

If the selected potential bank-acquirer reports on the possibility of accepting only part of the liabilities, the temporary administration makes an additional selection among other potential banks-acquirers following the selected potential bank-acquirer, based on the amount of assets on the last reporting date in descending order.

The liabilities, which are simultaneously the assets of this bank-acquirer shall not be transferred to a potential bank-acquirer that reports on the possibility of accepting only part of the liabilities.

9. If a potential bank -acquirer refuses to participate in the additional selection of a bank-acquirer, the temporary administration draws up a protocol decision.

The decision to select two or more banks-acquirers is formalized by the protocol decision of the temporary administration.

10. The cost of the transferred rights of claim on receivables is determined as the amount of debt listed on balance and off-balance accounts.

When transferring the assets and liabilities, the cost of assets and the amount of the liabilities of an insolvent bank are calculated at the date of transfer of assets and liabilities, agreed upon by the temporary administration and the bank-acquirer (banks-acquirers).

In the event that the amount of the transferred liabilities on the guaranteed deposits exceeds the amount of the property of the insolvent bank, the temporary administration, in accordance with paragraph 3 of Article 61-11 of the Law on Banks, contacts the organization that carries out compulsory guarantee of deposits to make up the difference in the time period established by the temporary administration.

11. At the initiative of the bank-acquirer (banks-acquirers), the transferred assets of the insolvent bank are evaluated with payment for the valuator's services by the bank-acquirer (banks-acquirers).

12. The costs associated with the transfer of assets and liabilities are paid from the funds of the bank-acquirer (banks-acquirers).

13. The agreement on simultaneous transfer of assets and liabilities is signed by the temporary administration and the bank-acquirer in 4 (four) copies (2 (two) in Kazakh and 2 (two) in Russian languages) with the transfer deed attached.

14. When completing the transfer deed on the date of the transfer of assets and liabilities, it shall contain the following information:

1) the amount and list of transferred assets of the insolvent bank, indicating the name, inventory number (if any), book value, bank account numbers on which the assets of the insolvent bank are recorded, documents confirming the ownership of the insolvent bank;

2) the cost and list of transferred rights of claim on bank loans with the surname, name, patronymic (if any) of the individual borrower, name of the legal entity-borrower, principal loan debt, dates of conclusion and numbers of bank loan agreements, term of bank loan

contracts, interest rates on bank loans, the amounts of interest on bank loans, accrued and received by the bank;

3) the amount of the transferred liabilities, including the list of deposits indicating the last name, first name, patronymic (if any) of individual depositors, names of legal entities-depositors, bank account numbers on which the amounts of deposits, deposit amounts, dates of conclusion and numbers of the bank account agreement and (or) bank deposit, the term of the agreement, interest rate on the deposit are recorded;

4) the amount and list of liabilities to other creditors with information on creditors - individuals and legal entities;

5) a list of transferred databases (including archival storage of documents in paper form), which contain information about customers, their operations and operations of an insolvent bank, primary documents, records of relationships with customers and other information necessary for the proper exercise of rights and liabilities on accepted assets and liabilities.

15. After the transfer of assets and liabilities, the temporary administration submits copies of the contract with the bank-acquirer (banks-acquirers) to the authorized body, the transfer deed.

16. The announcement of the transfer of assets and liabilities is published by the temporary administration, insolvent bank, bank-acquirer, the authorized body no later than 5 (five) working days from the date of the transfer of assets and liabilities in accordance with paragraph 7 of Article 61-11 of the Law on Banks.

17. If it is impossible to transfer assets and liabilities to another (other) bank (banks), the temporary administration shall submit an offer to the authorized body to conduct a transfer of assets and liabilities of a bank to a stabilization bank.

Chapter 3. Procedure for transfer of assets and liabilities of the bank, deprived of a license to conduct all banking and other operations, to the bank-acquirer by the temporary administration

18. The decision to conduct a transfer of assets and liabilities of a bank deprived of a license to conduct all banking and other operations is taken by the temporary administration.

19. The temporary administration, within 10 (ten) working days from the date the bank was deprived of the license to conduct all banking and other operations, takes a decision on transfer of assets and liabilities and contacts the authorized body to agree on the issue of the transfer of assets and liabilities with the following information:

1) the amount of the liabilities assumed to be transferred and the cost of the assets of a bank, deprived of a license to conduct all banking and other operations, their description with documents confirming liabilities, rights of claim on receivables, as well as the ownership right of a bank, deprived of a license to conduct all banking and other operations on the assets to be transferred;

2) a draft agreement on simultaneous transfer of assets and liabilities of a bank deprived of a license to conduct all banking and other operations;

3) the maximum allowable ratio of transferred assets to transferred liabilities.

Money, deposited to the closed accounts of persons who previously were its customers, as well as to the accounts of customers of a bank deprived of a license for all banking and other operations, shall not be included in the list of assets and liabilities of a bank, deprived of a license to conduct all banking and other operations intended for transfer, after the deprivation of its license to conduct all banking and other operations in accordance with subparagraph 1) of paragraph 1 of Article 48-1 of the Law on Banks.

At the request of the authorized body, the temporary administration submits the available documents related to the transfer of assets and liabilities.

20. The term for approval or refusal to approve by the authorized body of the issue of the transfer of assets and liabilities of a bank, deprived of a license to conduct all banking and other operations, by the temporary administration, shall not exceed 10 (ten) working days.

21. The provisions of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Rules shall apply to the cases when the temporary administration conducts operations to transfer assets and liabilities of a bank, deprived of a license to conduct all banking and other operations.