

# **Legal and Regulatory Platform for Enforcing Corporate Governance in Moldovan Banks**

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## Elements of legal framework for banks:

- Supervisory framework to ensure safety and soundness of banks
  - Corporate governance rules
  - Fit and proper certification
  - Supervisory and enforcement powers
  - Definition of concepts of beneficial ownership and control
- Securities laws enabling an efficient functioning of capital markets and transparent shareholding
- Judicial review which respects regulators' expertise but ensures their accountability

## In Moldova...

- Shareholding in banks is non-transparent
  - Supervisory ability to identify beneficial owners of shares in banks and ultimate controllers is limited
  - Controllers of banks unknown and are not subject to fit and proper testing
  - Opens door for shady businesses
- Judicial review is flawed
  - Some court decisions contradict financial sector laws
  - NBM/NCFM opinion is often not even requested
  - No clear restrictions in courts' ability to overrule supervisors
- Recent attacks highlighted these issues




## Key areas for improvement:

- Reporting to the supervisor and public disclosure of beneficial owners of significant interests in banks and controllers
- Stronger sanctioning regime
- Clear and predictable judicial review




## Ultimate controllers/beneficial owners

- Define ultimate controllers/beneficial owners in the law
    - The natural person(s) who ultimately owns or controls the owner or acquirer of shares in a bank, and/or on whose behalf the acquisition is being conducted
  - Ability to identify and verify identity of natural persons who control banks is needed
    - Develop qualitative and quantitative identification criteria
    - Make controllers subject to fit and proper certification
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## Disclosure requirements

- Disclosure requirements for ultimate controllers and beneficial owners (not just bank management)
  - Agreements between shareholders must be disclosed
  - Require disclosure of ownership/control toward public (not just the NBM)
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## Fit and Proper Requirements

- Should be on an ongoing basis, not only at the time of acquisition of bank interest
- NBM should be empowered to revoke or suspend authorization
- Develop criteria for *presumption of (un)fit and (un)proper*
- Prevent criminals from capturing banks (FATF standards)
- Do not grant (and revoke if already granted) fit and proper if identity, financial situation, etc. cannot be verified
- Prohibit controllers located in jurisdictions not implementing international standards for transparency of legal persons
- **“Burden of proof” should be on shareholders**





## **Fit and Proper Certification should NOT be granted (or should be revoked) if, for example:**

- Acquirer's group structure is not transparent
  - Its home jurisdiction is not transparent
  - Financial soundness of controller cannot be verified
  - Ultimate controllers hard to identify
  - Foreign shareholder is not adequately supervised
  - Acquisition could increase risk of money laundering or terrorism financing, etc.
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## Sanctioning should be strengthened

- Sanctions should be applied also to shareholders (not only banks)
- Violation of disclosure and reporting rules should subject shareholders to monetary, administrative and even criminal sanctions (e.g. Canada, Japan, Singapore)
- NBM should be empowered to restrict transfer or disposal of shares, preclude violators to influence the bank, receive dividends, etc.




## Other issues

- Institutional cooperation between NBM/NCFM, law enforcement agencies at home and abroad should be strengthened
- Consent to collect info from competent authorities on bank shareholders should be presumed by law (no hiding behind privacy laws)
- Align other laws (capital markets, securities) with these principles



## **Judicial Review is Needed But Should be Revised**

- Scope of reviewable actions should be clear
  - Recognize NBM/NCFM authority over complex and technical matters
  - Regulators' actions should be suspended only when there is clear misuse, abuse, or excess of supervisory power
  - Powers of judicial review should be clearly bounded
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## Steps Ahead

- Development and adoption of a new framework for shareholder transparency in banks is a structural benchmark under the IMF-supported program
    - First: adoption of amendments to primary legislation
    - Next: implementation through implementing regulations and mechanisms for domestic and international cooperation
  - Once adopted, the new framework should be applied to existing banks and shareholders, possibly with some transition period
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**Thank You!**



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