

Ordinance No. 33

on the Assignee's in Bankruptcy Remuneration

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Chapter One

General Provisions

Article 1. (1) This Ordinance shall establish the mechanism for determining monthly remuneration of persons appointed as assignee in bankruptcy in bankrupt banks and the procedure for reducing their remuneration.

(2) Persons appointed as assignee in bankruptcy in bankrupt banks shall receive equal monthly remuneration.

Article 2. (1) The amount of the monthly remuneration for the persons appointed as assignee in bankruptcy shall be determined by a decision of the Management Board of the Deposit Insurance Fund (the Fund) as follows:

1. for the period of six months following the date of the assignee's appointment the remuneration shall be a fixed amount that shall not be smaller than ten times the minimum monthly salary or greater than 30 times the minimum monthly salary in Bulgaria.

2. Following the expiration of the period under item. 1, the monthly remuneration for the persons appointed as assignee in bankruptcy shall be determined as a percentage of the total amount of property of the bankruptcy estate liquidated by the assignee in bankruptcy for the respective month and the collection of claims owed to the bank during the month.

(2) The determined monthly remuneration for the persons appointed as assignee in bankruptcy may, by a decision of the Management Board of the Fund, be reduced upon the occurrence of the circumstances under Article 30, para. 4 of the Law on Bank Bankruptcy.

(3) The decision under para. 1, item 1 shall be made along with the decision for appointment of an assignee in bankruptcy.

(4) The decision under para. 1, item 2 shall be made not later than the last day of the month for which a fixed remuneration has been set.

(5) The decisions under paras. 3 and 4 shall be made on the basis of the volume and the types of assets of the bank declared in bankruptcy, as well as the volume of the property subject to liquidation, the liquidation program, the proceeds from the liquidated property and all other circumstances included in the procedure for determining the amount of assignee's remuneration under Article 30, para. 3 of the Law on Bank Bankruptcy.

(6) Decisions under paras. 1 and 2 shall be subject to court appeal pursuant to the procedure provided for in the Law on Bank Bankruptcy. In case of suspension of the decision, the Management Board of the Fund shall settle the issue on its suspended part within a seven-day period following the receipt of the notification.

Chapter Two

Method for Determining the Assignee's Monthly Remuneration

Method for Determining the Assignee's Monthly Remuneration for the Period of Six Months Following the Date of His Appointment

Article 3. (1) The assignee's monthly remuneration for the period of six months following the date of his appointment shall be determined on the basis of:

1. the amount of bankruptcy estate;
2. the type and variety of rights included in the bankruptcy estate and occurrence of disputable circumstances associated with the establishment of these rights;
3. other circumstances associated with preserving or replenishing the bankruptcy estate, as well as with initiating necessary measures for liquidating rights from the bankruptcy estate in case of a threat of their destruction or devaluation.

(2) Upon ruling on the decision under Article 2, para. 1, item 1 the Management Board of the Fund shall determine the remuneration within the limits set in Article 30, para. 2 of the Law on Bank Bankruptcy by evaluating individually and in general all circumstances related to the criteria specified in para. 1.

(3) The determined fixed remuneration may be increased within the six-month period, provided it has been established that the assignee in bankruptcy exercises with due care his powers under Article 31, para. 1 of the Law on Bank Bankruptcy and has achieved significant results in preserving, replenishing or liquidating assets from the bankruptcy estate.

Method for Determining the Assignee's Monthly Remuneration for the Period Following the Six-month Period after the Date of Assignee's Appointment

Article 4. (1) The assignee's monthly remuneration for the period following the six-month period after the date of his appointment shall be determined as a percentage of the total amount of property of the bankruptcy estate liquidated by the assignee in bankruptcy and the collection of claims owed to the bankrupt bank for the respective month dependant on the type of assets included in the said total amount and within the specified limits, as follows:

1. for collecting claims on bank accounts with operating banks (0% – 0.01%);

2. for liquidating securities:
 - a) with an established stock-exchange price (0.01% – 0.5%);
 - b) other (0.5% – 3%);
3. for liquidating or collecting claims (loans):
 - a) to operating financial institutions (with the exception of operating banks) (0.01% – 0.5%);
 - b) to other operating legal entities (0.1% – 3%);
 - c) to physical persons (0.5% – 5%);
 - d) to entities in liquidation (1% – 5%);
 - e) to entities in bankruptcy (3% – 10%);
4. for liquidating interests (0.5% – 5%);
5. for liquidating long-term tangible or intangible assets (1% – 5%);
6. other (0.01% – 5%).

(2) The remuneration determined under this procedure shall apply to all persons appointed as assignee in bankruptcy and shall be equally distributed between them.

(3) Upon ruling on the decision under Article 2, para. 1, item 2 the Management Board of the Fund shall determine a particular percentage within the limits provided for in Article 1 by evaluating individually and in general all circumstances related to the criteria specified in Article 2, para. 5 and following an analysis of the proceeds from the property liquidated by the assignee in bankruptcy from the bankruptcy estate.

(4) Where the liquidated right or collected claim was a subject of a legal dispute and the dispute was settled by a court decision on the basis of which liquidation or collection has been initiated, the percentage for a particular asset determined under para. 1 shall be added to 0.5.

(5) The percentages specified in paras. 1 and 4 shall apply to the amount realized from liquidating a right or collecting a claim for a particular month.

(6) The Management Board of the Deposit Insurance Fund may, by a decision, raise the determined percentage but it shall not exceed the upper limit specified in para. 1.

(7) In case of a sale of the bank as an enterprise under Articles 91 and 92 of the Law on Bank Bankruptcy, the assignee in bankruptcy has the rights to remuneration amounting from 0.1% to 1% of the amount of liabilities assumed by the buyer under the transaction approved by the Court.

(8) The Management Board of the Fund shall take into account that the assignee in bankruptcy will receive an additional percentage of the total amount formed as a result of applying paras. 1 to 7 in respect of liquidated property upon conclusion of bankruptcy proceedings, unless the circumstances under para. 9 have occurred. The additional remuneration together with the remuneration which has been already paid

to the assignee in bankruptcy may not exceed 100% of the total amount formed as a result of applying the maximum percentage rates under para. 1 or 7 in respect of liquidated property.

(9) Where the assignee in bankruptcy has been removed from office pursuant to Article 29, para. 1, items 2, 4 or 5 of the Law on Bank Bankruptcy, the persons appointed as assignee in bankruptcy or their successors may, upon conclusion of the bankruptcy proceedings, receive additional remuneration under para. 8 if the said person has significantly contributed to the successful conclusion of the bankruptcy proceedings. Additional remuneration may be also paid to persons, who have been removed from office prior to the conclusion of the bankruptcy proceedings, pursuant to Article 29, para. 1, items 1 or 3 of the Law on Bank Bankruptcy provided that:

1. they have been removed from office upon a request based on a cogent reason in the cases under Article 29, para. 1, item 1;
2. they have not been found fault with for the occurrence of the ground for removal in the cases under Article 29, para. 1, item 3;

(10) The Fund shall carry out at least in six months examinations on the compliance with the procedure provided for in the preceding paragraphs for determining the remuneration of the persons appointed as assignee in bankruptcy in banks declared in bankruptcy.

(11) The assignee in bankruptcy shall inform the Fund on the remuneration to be received in the respective month, on its elements and the manner of its formation in the monthly reports prepared under Article 32, para. 2 of the Law on Bank Bankruptcy.

Chapter Three

Procedure for Reducing the Assignee's Remuneration

Article 5. (1) The Fund may, by a unilateral decision of the Management Board, reduce the remuneration for the persons appointed as assignee in bankruptcy for a certain period under the conditions provided for in the Law on Bank Bankruptcy and following the proceedings for reducing the remuneration (proceedings) under the procedure prescribed in this Ordinance.

(2) The proceedings shall be instituted by a report containing:

1. the names and the position of the person who has prepared the report;
2. the date of the report;
3. the name of the person appointed as assignee in bankruptcy against whom the proceedings have been instituted, and the bank in which he performs the functions of an assignee in bankruptcy;
4. a description of the established circumstances under Article 30, para. 4 of the Law on Bank Bankruptcy;

5. evidence based on which the circumstances under Article 30, para. 4 of the Law on Bank Bankruptcy have been established;

6. the amount and period for which a reduction of assignee's remuneration is proposed.

(3) A copy of the report, on the basis of which a reduction of the monthly remuneration is proposed, shall be submitted to the assignee in bankruptcy. Within three days following the receipt of a copy of the report, the assignee in bankruptcy may raise objections in writing and enclose evidence to them.

(4) Within 14 days following the receipt of the objections or the expiry of the term under para. 3 the report together with the objections and the enclosed evidence, as well as with the statement of opinion of the person who has prepared the report on the objections shall be filed for consideration by the Management Board of the Fund. Prior to taking a decision on the proposal made, the Management Board may, at its discretion, require collection of additional evidence.

(5) The Management Board of the Fund shall consider the evidence provided for in para. 4 and shall take a decision after having assessed whether the established circumstances in the report are available, if they are deemed a violation under Article 30, para. 4 of the Law on Bank Bankruptcy, if the violation was a result of default behavior by the persons appointed as assignee in bankruptcy, if the proposal for reducing the remuneration corresponds to the severity of the violation.

(6) Based on the decision under the preceding paragraph, the Management Board of the Fund may:

1. reduce the remuneration of the persons appointed as assignee in bankruptcy in accordance with the proposal in the report after it has been established that all circumstances under para. 5 are available;

2. reduce the remuneration of the persons appointed as assignee in bankruptcy to an amount and for a period other than those proposed in the report, where inconsistency has been established between the reduction proposed in the report and the severity of the violation;

3. refuse to reduce the remuneration of the persons appointed as assignee in bankruptcy after it has assessed that none of the circumstances under para. 5 are available.

(7) The decision under para. 6, items 1 and 2 shall include:

1. the number, date and place of issue;

2. the number and date of the report on the basis of which the proceedings have been instituted;

3. the names of the persons appointed as assignee in bankruptcy against whom the proceedings have been carried out;

4. a description of the violation, its qualification and the evidence used to establish it;

5. the amount and the period for which the remuneration of each person appointed as assignee in bankruptcy is reduced;

6. an opportunity to appeal the decision, specifying a term and Court.

(8) The total reduction of the remuneration of the persons appointed as assignee in bankruptcy may not exceed:

1. the amount of improperly incurred expenses – in the cases under Article 30, para. 4, item 1 of the Law on Bank Bankruptcy;

2. the total balance sheet value of the items and rights the assignee in bankruptcy has disposed thereof in violation of the procedures established by law – in the cases under Article 30, para. 4, item 2 of the Law on Bank Bankruptcy;

3. the sum total under items 1 and 2 – in the cases the grounds under Article 30, para. 4, items 1 and 2 of the Law on Bank Bankruptcy are available.

(9) A copy of the decision for reducing the remuneration shall be handed against a signature to the persons appointed as assignee in bankruptcy against whom the proceedings have been carried out.

Additional Provision

§ 1. Within the meaning of this Ordinance ‘financial institutions’ shall be:

1. stock exchanges and persons authorized to organize an unofficial market of securities under the terms and procedures of the Law on Public Offering of Securities, the Central Depository, investment intermediaries, investment and management companies;

2. insurers and insurance brokers;

3. companies conducting operations on supplementary social security;

4. entities whose major subject of activity includes conduct of one or more transactions under Article 1, para. 5, items 1, 2, 3, 7, 9 or 10 of the Law on Banks;

5. foreign persons who have the statute of the persons under items 1–4 pursuant to the legislation of the respective country.

Transitional and Final Provisions

§ 2. This Ordinance is issued on the grounds of § 3 in relation to Article 30, para. 7 of the Law on Bank Bankruptcy.

§ 3. (1) This Ordinance shall apply in respect of remuneration of the persons exercising the powers of assignee in bankruptcy in a bank declared in bankruptcy by the moment of enforcement of this Ordinance.

(2) The provisions of Article 1, para. 2 of this Ordinance shall not apply provided only one of the persons appointed as assignee in bankruptcy is paid a remuneration under Article 2, para. 1, item 1.

(3) In cases under para. 1 and in compliance with prerequisites and conditions specified below, the Management Board of the Fund may determine the following remuneration under Article 4:

1. in case of a sale of a bank as an enterprise under Articles 91 and 92 of the Law on Bank Bankruptcy – up to 4% of the amount of liabilities assumed by the purchaser according to the terms of the deal approved by the Court;

2. in case of a public sale at an auction of the property and property rights of the bank as a whole – up to 4% of the price paid by the purchaser for the property and property rights as a whole.

§ 4. This Ordinance is adopted by Resolution No. 85 of 23 October 2003 of the Governing Council of the Bulgarian National Bank.