

## **Act amending Banking Act (ZBan-1L)**

### **Article 1**

In the second paragraph of Article 4 of the Banking Act (Official Gazette of the Republic of Slovenia, nos. 99/10 – official consolidated text, 9/11 – ZPlaSS-B, 35/11, 52/11 – corr., 59/11, 85/11, 48/12, 105/12, 56/13 and 63/13-ZS - K), a new point 5. shall be added after point 4., which shall read:

“5. Directive 2001/24/EC means Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).”.

### **Article 2**

The title of Article 61 shall be amended as follows:

“(regulation of the members of the Management Board and the Supervisory Board and statutes of limitation)”.

The text that shall become the new first paragraph, shall receive a new second paragraph which shall read as follows:

“(2) Regardless of the provisions of the act regulating criminal acts and the act regulating obligatory relationships, the criminal offences and the liability for damages of the members of bank management or supervisory bodies, which are in connection with implementing the function of a member of the bank management or supervisory body, shall fall under statute of limitation, which is four times longer than the general statute of limitations as stipulated by the act regulating criminal offences and the act regulating obligatory relationships.”.

### **Article 3**

In the second paragraph of Article 215 the word “and” at the end of the point 4. shall be deleted and a new point 4.a shall be added and shall read:

“4a. if the bank transfer this information to the court, the state prosecutor or the police in case there is reason to suspect that a criminal offense was committed, except in cases where for the transmission of confidential information law explicitly stipulates the order of the investigating judge, and”.

### **Article 4**

In the second paragraph of Article 223, point 5 shall be amended to read:

“5. Extraordinary measure,”.

### **Article 5**

In Article 249.a, the eighth, ninth and tenth paragraphs shall be deleted.

## **Article 6**

In the first paragraph of Article 253, a new point 1.a shall be added after point 1., which shall read:

“1.a Write down or conversion of a bank’s qualified liabilities,”.

A new third paragraph shall be added after the second paragraph and shall read:

“(3) Extraordinary measures are considered to reorganization measures as defined by Directive 2001/24/EC.”.

## **Article 7**

In the first paragraph of Article 253a, point 2. shall be amended to read:

“2. no circumstances exist to provide the possibility for the reasons as stated in the preceding point to be properly eliminated on a timely basis and”.

The word “and” at the end of the point 3. shall be added and a new point 4. shall be added and shall read:

“4. the extraordinary measures are in the public interest to prevent an endanger the stability of the financial system.”.

A second paragraph shall be amended to read:

“(4) For the purposes of the first paragraph of this Article it shall be considered that increased risk in relation with the bank is delivered particularly, if the bank does not provide or in the next six months is not likely to provide a minimum capital in accordance with Article 136 of this Act, or the relevant liquidity position in accordance with Article 184 of this Act in a way that would justify the withdrawal of the authorisation.”.

## **Article 8**

After Article 253a, a new Article 253b shall be added which shall read:

“Article 253b  
(objective of extraordinary measures)

Extraordinary measures shall be imposed due to the reorganisation of the bank, i.e.:

1. to eliminate the reasons in the bank as determined under the first paragraph of Article 253a of this Act and to re-establish the conditions for the long-term successful operations of the bank under this Act and other valid regulations, or
2. to implement the procedures for a gradual winding up of the bank including partial or complete termination of its operations.”.

## **Article 9**

Under Article 255a, the full stop at the end of the second sentence shall be substituted with a comma and the text shall be added as follows: “except for the jurisdiction of the general assembly under

Article 347 of this Act in relation to the realisation of judicial protection against the decision of the Bank of Slovenia on an extraordinary measure.”.

New second, third, fourth, fifth and sixth paragraphs shall be added to the text of the Article, which shall become the first paragraph, to read:

“(2) In the case as determined in the preceding paragraph, the duties and powers of members of the bank’s supervisory board shall be performed by the Bank of Slovenia under this Act.

(3) Notwithstanding the provisions of the ZGD-1 or other provisions under this Act with regard to the implementation of the powers of the general assembly and the bank’s supervisory board, the Bank of Slovenia shall adopt the decisions as determined in the first paragraph of this Article in relation to the implementation of the powers of the general assembly and the supervisory board in the form of decisions under the act, regulating the Bank of Slovenia.

(4) Regarding the powers of the general assembly implemented by the Bank of Slovenia under the first paragraph of this Article, the provisions of the ZGD-1 relating to the convening and decision-making at the general assembly meeting and regarding the challenging and enforcing of the nullity of the general assembly’s decisions shall not apply.

(5) In three working days after the issue, the Bank of Slovenia shall submit a decision on the implementation of the powers of the general assembly to the court of registration for the purposes of its publication under the rules on the publication of the minutes of the general assembly of a public limited company.

(6) The provisions of Article 75 of this Act and the provisions of Article 279 of the ZGD-1 relating to the obligation of the appointment of an auditing committee shall not apply for a bank subject to the imposition of extraordinary measures.”.

## **Article 10**

Article 256 shall be amended as follows:

### **“Article 256**

**(appointment of special administration and members of special administration)**

(1) Based on the decision on special administration, the Bank of Slovenia shall appoint a special administration at the bank and appoint two or more special administrators with the powers to perform the function of special administration members of the bank.

(2) When the decision on the appointment of special administration is submitted to the bank:

1. the functions of the management board members and the authorisations and powers of the management board members of the bank for managing the operations and representing the bank shall be terminated, and
2. special administrators shall assume the terms of office as special administration members as well as the authorisations and powers to manage and represent the bank.

(3) Notwithstanding the preceding paragraph, the members of the bank’s management board, whose powers to manage and represent the bank were terminated under the preceding paragraph, shall continue to represent the bank after the appointment of the special administration in all judicial protection procedures against the decision of the Bank of Slovenia under Article 347 of this Act.

(4) The bank's management board members whose term of office as management board members has been terminated by means of the appointment of a special administration, shall not be entitled to receive reimbursement or other payments laid down in the bank's internal legal documents or agreed with contracts between the bank and management board members for cases of early termination or discharge from the function of the bank's management board member.

(5) Provisions of this Act regarding the extraordinary authorised representative with powers to perform the function of the bank's management board member shall apply for a member of the special administration, excluding the fifth paragraph of Article 249f of this Act.”.

## **Article 11**

After Article 256, a new Article 256.a shall be added which shall read:

“Article 256.a  
(supervision of the financial situation of special administration members)

(1) The special administration members shall be liable for the supervision of the financial situation under the act regulating the integrity and prevention of corruption.

(2) The provisions of the act regulating the integrity and prevention of corruption shall apply to procedures for persons liable for reporting their financial situation, changes in their financial situation and the implementation of supervision of the financial situation of persons liable under the preceding paragraph.

(3) The deadlines related to the supervision of the financial situation under the act regulating the integrity and prevention of corruption shall commence in relation to the duty of each special administration member on the day when they assume their position.”

## **Article 12**

The title of Article 258 shall be amended as follows:

“(authorisations and the term of office of the special administration)”.

The text “if this subsection does not explicitly determine otherwise.” shall be added after the comma at the end of the second paragraph.

A new third paragraph shall be added after the second paragraph which shall read:

“(3) The term of office of the special administration in the bank shall be determined for a maximum period of one year and shall be subject to individual prolongations of one year, if such prolongation is deemed necessary to achieve the objectives of extraordinary measures. The total term of office of the special administration shall not be longer than three years from the appointment of the special administration.”.

## **Article 13**

Article 260 shall be amended as follows:

“Article 260  
(reports of special administration)

(1) In two months after its appointment, the special administration shall submit to the Bank of Slovenia a report on the financial situation and a report on the terms of the bank's operations under the special administration.

(2) The special administration shall immediately report to the Bank of Slovenia on all significant circumstances that impact the conditions of the bank's operations under the special administration and on the realisation of the objectives of extraordinary measures.

(3) The special administration shall immediately inform the Bank of Slovenia, The Commission for the Prevention of Corruption of the Republic of Slovenia and the law enforcement authorities on all suspicions of corrupt and criminal acts which the special administration has noticed within the scope of its work or was informed about them.”

**Article 14**

A new Article 260.a and Article 260.b shall be added after Article 260 and shall read:

“Article 260.a  
(bank reorganisation plan)

(1) Simultaneously with the report under the first paragraph of Article 260 of this Act, the special administration shall submit an assessment to the Bank of Slovenia regarding:

1. the possibilities to use the extraordinary measures and to establish the conditions for the long-term successful operation of the bank in a reasonable time period by assessing the anticipated costs of the implementation of such measures, and
2. the fulfilment of conditions under Article 320 of this Act for the commencement of the bankruptcy procedure, or that such conditions would emerge in the next six months and in such case also the assessment of consequences of a possible bankruptcy for the situation of the creditors.

(2) If the special administration assesses that the conditions for long-term successful operations of the bank may be established by implementing certain measures in a reasonable time period, it shall submit a reorganisation plan that will contain especially:

1. the description of measures for eliminating the reasons under the first paragraph of Article 253a of this Act, including the measures based on the act regulating the measures for the enhancement of bank stability, the determination of deadlines when the measures shall be implemented, and the assessment of anticipated costs of the implementation of the aforementioned measures,
2. the assessment of the effects of the write down or conversion of bank's qualified liabilities based on the 1.a point of the first paragraph of Article 253 of this Act regarding the bank's financial situation,
3. the measures for the reallocation and dispersion of the bank's potential losses,
4. the assessment of non-anticipated expenses that could impact the bank's liabilities and its operations.

(3) If the special administration assesses that the measures for establishing long-term successful operations in the bank shall not be successful or will not be implemented in a reasonable time period, the special administration shall determine the measures for a gradual winding up of the bank in the reorganisation plan, including the measures for a gradual realisation of the bank's assets and the repayment of bank's creditors.

(4) The special administration shall start implementing the reorganisation plan upon the approval of the Bank of Slovenia.

(5) The special administration shall notify the Bank of Slovenia on all circumstances affecting the implementation of the reorganisation plan and suggest possible amendments to the plan. The amended plan shall be implemented when the Bank of Slovenia approves the amendments on the proposal of the special administration.

(6) If the reorganisation plan stipulates the gradual winding up of the bank, the special administration cannot pay qualified liabilities of the bank as stipulated under the sixth paragraph of Article 261.a of this Act without the preliminary consent of the Bank of Slovenia.

#### Article 260.b

(authorization to claims for compensation)

(1) Notwithstanding of point 7 of the first paragraph of Article 249.f hereof the special administration does not require any special powers of the Bank of Slovenia for making claims under the liability for damages of the former members of bank management.

(2) The special administration enforce the claims under the liability for damages of the former members of bank management, who in carrying out of their duties did not act with due care and competence, where there is a pecuniary interest by the bank."

### Article 15

A new subsection shall be added after Article 261, i.e. "7.7.2. Write down or conversion of qualified liabilities of the bank" as well as new Articles 261a, 261b, 261c, 261d and 261e, which shall read:

#### "Article 261a

(measure comprising the write down or conversion of qualified liabilities)

(1) The Bank of Slovenia shall issue a decision on an extraordinary measure, determining that:

1. the qualified liabilities shall be partially or entirely written down or
2. the qualified liabilities of the bank under points 2 through 4 of the sixth paragraph of this Article Act shall be partially or entirely converted in new ordinary shares of the bank on the basis of the increase of bank's share capital on the basis of the payment of the in-kind contribution in the form of creditors' claims, which present the qualified liabilities.

(2) The decision on the write down of qualified liabilities shall contain:

1. a decision on which qualified liabilities shall be written down, and in the case of each order of liabilities, also whether all liabilities are written down or only a share, whereas the Bank of Slovenia may decide that the qualified liabilities of a subsequent order may partially or entirely be written down if the Bank of Slovenia decides that the qualified liabilities of a preceding order are entirely written down,
2. in the case of write down of the qualified liabilities of the first order, also the amount of the share capital after the write down of the qualified liabilities of the first order and the nominal or attributable amount of shares or the decision on the annulment of shares in case qualified liabilities of the first order are written down entirely,

3. the decision on the simultaneous increase of the bank's share capital in accordance with Article 262a of this Act, if the bank's share capital decreases below the amount stipulated under Article 42 of this Act due to the write down of the qualified liabilities of the first order, i.e. in the minimum extent that will enable the bank to guarantee the share capital under Article 42 of this Act.

(3) The decision on the conversion of qualified liabilities into shares shall contain:

1. the decision that the bank's share capital shall increase with in-kind contributions referring to creditors' claims that present the bank's qualified liabilities under points 2 through 4 of the sixth paragraph of this Article,
2. the decision on which qualified liabilities of the bank shall be converted into bank's ordinary shares in the procedure of increasing the share capital with in-kind contributions, and also for qualified liabilities of each order, i.e. whether they are converted entirely or just a share, up to which they are converted; the Bank of Slovenia may decide that the qualified liabilities of a subsequent order may only be partially or entirely converted if the Bank of Slovenia decides that the qualified liabilities of the preceding order are entirely written down or entirely converted,
3. the ratio expressed as the amount (unit) of the qualified liability for one new share in case of qualified liabilities of each rank as stipulated under the sixth paragraph of this Article, which are converted into ordinary shares,
4. the finding that by issuing the decision, it shall be considered that the claims of creditors subject to in-kind contributions in the increase of bank's share capital and which present the bank's qualified liability under point 2 of this paragraph, shall be transferred to the bank and the new shares shall be registered and paid.

(4) Article 262a of this Act shall apply for the decision on the increase of bank's share capital under the second and third paragraphs of this Article.

(5) In connection with the write down or conversion of qualified liabilities of the bank, the Bank of Slovenia shall guarantee that each creditor shall not be subjected to greater losses than in the case of the bank's bankruptcy due to the write down or the conversion of bank's qualified liabilities.

(6) The bank's qualified liabilities shall comprise:

1. bank's share capital (liabilities of the first order),
2. liabilities to holders of hybrid financial instruments as stipulated under point 4 of the first paragraph of Article 133 of this Act (liabilities of the second order),
3. liabilities to holders of financial instruments which are under Article 134 of this Act considered in the calculation of the bank's supplementary capital, except if such liabilities are already contained under point 1 or point 2 of this paragraph (liabilities of the third order),
4. liabilities not included under points 1, 2 or 3 of this paragraph, and which would in case of bankruptcy of the bank be repaid after the payment of bank's senior debts (liabilities of the fourth order).

#### Article 261b (establishing the value of assets)

(1) The Bank of Slovenia shall decide on the write down or conversion of qualified liabilities on the basis of valuation of assets of the bank, by an independent firm appraiser to assess:

- the amount of the repayment of qualifying liabilities from its assets on the assumption that the company is a gone concern,
- the value of new shares in the case of an increase in share capital by means of the conversion of qualified liabilities into equity on the assumption that the company is a going concern.

(2) Any potential effects of measures comprising the state aid offered to the bank or the Bank of Slovenia's measures for providing liquidity help to the bank shall not be considered in the assessment of value based on the preceding paragraph.

(3) When a timely assessment under the first paragraph cannot be obtained due to the emergency of the measure, the assessment shall be conducted by the Bank of Slovenia.

Article 261c  
(scope of write down or conversion of qualified liabilities)

(1) In the decision issued in accordance with the second paragraph of Article 261a of this Act, the Bank of Slovenia sets the amount of qualified liabilities to be written down to the extent necessary to cover bank's losses, taking into account the value of assets as established in accordance with previous article.

(2) In the decision issued in accordance with the third paragraph of Article 261a of this Act, the Bank of Slovenia sets the amount of qualified liabilities to be converted into bank's ordinary shares to the extent necessary to establish capital adequacy in accordance with the requirements of the Bank of Slovenia.

Article 261d  
(other rules on the conversion of qualified liabilities)

In its decision on the conversion of qualified liabilities, the Bank of Slovenia shall in the determination of the ratio under point 3 of the third paragraph of Article 261a of this Act consider the value of qualified liabilities that are subject to in-kind contributions, i.e. on the basis of the appraisal determined in Article 261b of this Act, and considering the probable share of the repayment of these claims in case of winding up of the bank, if other extraordinary measures are not imposed.

Article 261e  
(rights of creditors in case of write down or conversion of qualified liabilities)

(1) The creditors of qualified liabilities shall not be eligible to demand from the bank a reimbursement for damages or to enforce other claims which have been contractually arranged in case of violations or the non-fulfilment of contractual obligations of the bank if the violation of the non-fulfilment of contractual obligations of the bank is the consequence of an extraordinary measure on the basis of this Act. The contractual arrangement which might be contrary to this provision shall be null and void.

(2) The extraordinary measure involving the write down or conversion of qualified liabilities of the bank under this Act shall not be considered a justified reason for a preliminary (early) termination or the withdrawal from the contract concluded between the contracting party and the bank, which stipulates the right to a preliminary termination or withdrawal from the contract in the case of violation or non-fulfilment of contractual obligations. Notwithstanding the text of the contract concluded between the bank and the counterparty, the extraordinary measure under the preceding sentence shall not be considered a justifiable reason for the maturity of other obligations on the basis of this contract. The contractual arrangement which might be contrary to this provision shall be null and void.

(3) The preceding paragraph shall also apply in the case of an agreement between the bank and the counterparty, which determines the right of the counterparty, that in the case of non-fulfilment or any other violation of contractual obligations arising from any contract between the parties and for which the agreement applies, to consider its counter claim from any contract for which the agreement applies



as mature, or to enforce the right to a preliminary termination or the withdrawal from an individual or all contracts for which the agreement applies.

(4) The preceding paragraph shall also apply for contracts concluded between the bank and the third party, who is included in the agreement on the basis of an agreement between the bank and the counter party.

(5) For the purpose of paragraphs two, three and four of this article financial instruments issued or owned by the bank shall be treated as a contract.”

#### **Article 16**

The subsection 7.7.2 shall be renumbered to subsection 7.7.3.

#### **Article 17**

The subsection 7.7.3 shall be renumbered to subsection 7.7.4.

#### **Article 18**

In Article 262a, the first and the second paragraphs shall be amended to read:

“(1) The Bank of Slovenia with the decision to increase the share capital determine the value of new shares, which will be paid by the investor. The Bank of Slovenia for the purpose of determining the value of the issued new shares acquire an evaluation of an independent firm appraiser.

(2) By way of a decision on increasing the share capital as determined in the preceding paragraph, the Bank of Slovenia may decide to issue new ordinary bank's shares due to the implementation of the increase of share capital.”.

#### **Article 19**

The subsection 7.7.4 shall be renumbered to subsection 7.7.5.

#### **Article 20**

In the second paragraph of Article 262b, the text “qualified liabilities of the bank under the sixth paragraph of Article 261.a of this Act” shall be added at the end of the introductory sentence and the colon shall be replaced by a full stop. The text “1. The liabilities of the bank to the bank's shareholders, excluding the claims on the basis of deposits secured on the basis of this Act, 2. The liabilities of the bank to creditors on the basis of hybrid instruments which are considered in the calculation of the bank's share capital” shall be deleted.

#### **Article 21**

The subsection 7.7.5 shall be renumbered to subsection 7.7.6.

## **Article 22**

Article 263 shall be amended as follows:

“Article 263  
(evaluation of results of extraordinary measures)

(1) The Bank of Slovenia shall evaluate the success of extraordinary measures considering the objectives determined under Article 253b of this Act on the basis of reports of the special administration and other circumstances at least once every three months.

(2) If the Bank of Slovenia evaluates that during the period of extraordinary measures, the bank's situation has not improved to the extent permitting the bank to guarantee long-term successful operations under this Act and other valid regulations, the Bank of Slovenia shall issue a decision on the commencement of a compulsory liquidation or on establishing the conditions for the commencement of the bank's bankruptcy.”.

## **Article 23**

Article 266 shall be amended as follows:

“Article 266  
(grounds for the commencement of compulsory liquidation)

(1) The Bank of Slovenia shall issue a decision on the commencement of compulsory liquidation:

1. if the bank's authorisation for performing banking services has been withdrawn,
2. if the authorisation for performing banking services has been terminated due to the reasons determined under points 1 or 2 of the first paragraph of Article 87 of this Act and the bank's general assembly has not adopted a decision on the liquidation of the bank under Article 76 of the decision on the modification of bank's activity under Article 80 of this Act within two months after the issue of the decision determined in the second paragraph of Article 87 of this Act,
3. if circumstances determined in the second paragraph of Article 263 of this Act emerge and no conditions for the commencement of a bankruptcy procedure exist.

(2) The Bank of Slovenia shall issue a decision on the commencement of a compulsory liquidation:

1. in the case referred to under point 1 of the preceding paragraph: simultaneously with the issue of the decision on the withdrawal of the permit,
2. in the case referred to under point 2 of the preceding paragraph: in eight days after the expiry of a two-month deadline for the adoption of the decision on liquidation or on the modification of bank's activity,
3. in the case referred to under point 3 of the preceding paragraph: within eight days following the occurrence of the situation referred to in the first paragraph of Article 263 of this Act.”.

## **Article 24**

In the first paragraph of Article 268, the word “issue” shall be replaced with the word “submission”; the text “the terms of office of the bank's management board members shall be terminated and” shall be added after the text “on compulsory liquidation”.

## **Article 25**

The title of subsection 7.8.2 shall be amended to read as follows:

“7.8.2 Special provisions for the recognition of the effects of measures of competent authorities against banks performing services in other Member States, and for the bank of the Member State that performs services in the Republic of Slovenia”.

## **Article 26**

The text of Article 272, which shall be the new first paragraph, shall be amended to read:

“(1) The measure of the competent authority of a Member State on the initiation of the procedure against the bank of the Member State that performs banking and other mutually recognised financial services in the Republic of Slovenia directly or through its branches, and which is imposed on the bank of the Member State due to the winding up or reorganisation of the bank, shall have immediate effect on the territory of the Republic of Slovenia without any special recognition procedure and the implementation of the decision of the competent authority in the Member State, i.e. immediately when it is executable in the Member State.”.

After the first paragraph, new second and third paragraphs shall be added to read:

“(2) The procedures under the preceding paragraph for the winding up of the bank include all procedures with general effects and shall be introduced, monitored and supervised by the administrative or judicial authorities of the Member State in order to realise the bank’s assets including the procedures that shall be concluded by settlement or any other similar measure.

(3) The procedures under the first paragraph of this Article for bank reorganisation shall include measures on which the competent authority of the Member State, where the bank has its head office, decides to preserve or re-establish a financially sound position of the bank, and which could impact the already valid rights of third parties, including measures that comprise the possibility for temporary termination of payments and the execution of measures or the reduction of liabilities.”.

## **Article 27**

The title of Article 273 shall be amended as follows:

“(notifying the supervisory authorities of other Member States on extraordinary measures and the commencement of the compulsory liquidation proceedings)”.

The first paragraph shall be amended to read as follows:

“(1) If the bank performs banking and other mutually recognised financial services in another Member State, the Bank of Slovenia shall notify the competent supervisory authority of the Member State, where the bank has its branch or where it directly performs banking and other mutually recognised financial services, that it shall issue a decision on extraordinary measure including the write down or conversion of qualified liabilities of the bank or the decision on the commencement of the compulsory liquidation proceedings. The notification shall also indicate legal consequences and actual effects of the issued decision.”

## **Article 28**

Article 274 shall be amended as follows:

#### **“Article 274**

(publication of the summary of the decision on the extraordinary measure and on the commencement of the compulsory liquidation procedure in the Official Journal of the European Union)

(1) The Bank of Slovenia shall publish the decision under the first paragraph of Article 273 of this Act in the form of a summary in the Official Journal of the European Union and in two daily newspapers circulated throughout the territory of the Member State in which the bank has a branch or where it directly performs banking and other mutually recognised financial services.

(2) The summary shall be published in the official language of the Member State, in which the bank has a branch or where it directly performs banking and other mutually recognised financial services. The summary shall include:

1. the grounds and legal basis for issuing the decision,
2. possible deadlines for submitting a legal remedy against the decision, and
3. name and address of the competent authority where the legal remedy against the decision may be lodged.

(3) In the case of a decision on compulsory liquidation, the summary under the preceding paragraph shall also include:

1. name and address of the authority managing the compulsory liquidation proceedings,
2. the law applicable for the compulsory liquidation proceedings,
3. the names of liquidators,
4. the deadline for lodging the claims and legal consequences if a creditor fails to lodge a claim.”.

#### **Article 29**

At the end of the sentence in Article 318, the following text shall be added: “based on the act regulating the compulsory composition of companies”.

#### **Article 30**

The title of subsection 10.2.2 shall be amended to read as follows:

“10.2.2 Judicial protection procedure against the decision on the winding up of the bank and the extraordinary measure”.

#### **Article 31**

At the end of the sentence in the first paragraph of Article 346, the following text shall be added “and against the decision on extraordinary measure”.

The text “and decision on extraordinary measure” shall be added to the text in the second paragraph, i.e. after “on winding up the bank”.

#### **Article 32**

Article 347 shall be amended as follows:

“Article 347  
(the plaintiff)”

(1) A lawsuit against the decision of the Bank of Slovenia on the winding up of the bank and against the decision on extraordinary measure may be brought by a bank. The deadline for filing a lawsuit against the decision on the winding up of the bank or the decision on extraordinary measure shall commence on the date when the decision is submitted to all members of the bank's management board.

(2) If the authorisations of the bank's management board for managing operations and representing the bank are terminated on the basis of the decision on winding up of the bank or the decision on extraordinary measure, the bank shall be represented in the court protection procedure against the decision of the Bank of Slovenia by persons, whose term of office as management board members have been terminated on the basis of the decision on the winding up of the bank or on extraordinary measure.

(3) Persons, whose terms of office as management board members have been terminated on the basis of the decision on the winding up of the bank or the decision on extraordinary measure, shall conduct all matters in connection with the representation of the bank based on the preceding paragraph of this Article with the due diligence of a conscientious and fair manager. Persons, whose terms of office as management board members have been terminated on the basis of the decision on the winding up of the bank or the decision on extraordinary measure, shall, merely due to this fact, not be relieved of the responsibility as the bank's management board members and shareholders regarding the diligence in enforcing the right of judicial protection against the decision on the winding up of the bank or the decision on extraordinary measure.

(4) The shareholders of the bank, whose total shares amount to at least one tenth of the bank's share capital, may demand from the bank's management board or special administration, if such is appointed, for the purposes of enforcing judicial protection against the decision of the Bank of Slovenia on the winding up of the bank or on extraordinary measure to convene the bank's general meeting of shareholders with the proposal that the general assembly discharges the persons who are authorised on the basis of second paragraph of this Article to represent the bank, and to appoint other persons for representation of the bank in the judicial protection against the decision of the Bank of Slovenia.

(5) Persons determined in the third paragraph of this Article shall be held responsible for covering the costs in connection with the procedures of enforcing judicial protection against the decision of the Bank of Slovenia on the winding up of the bank and against the decision on extraordinary measure, including the compensation for persons authorised to represent the bank in accordance with this Article. Notwithstanding the preceding sentence, those shareholders who voted for the decision as determined in the preceding paragraph shall be held liable for costs determined in the preceding sentence in the case when other persons are appointed to represent the bank in judicial protection procedures against the decision of the Bank of Slovenia in accordance with the preceding paragraph.

(6) Persons authorised to represent the bank in judicial protection procedures against the decision of the Bank of Slovenia in accordance with this Article may demand from the special administration, if such is appointed, to submit all information and data about the bank's operations, which are required for enforcing judicial protection.”

**Article 33**

In the first paragraph of Article 348, the wording “or on extraordinary measure” shall be added after the wording “on the winding up of the bank”.

#### **Article 34**

In the second paragraph of Article 349, the wording “or on extraordinary measure” shall be added after the wording “on the winding up of the bank”.

#### **Article 35**

The title of subsection 10.2.3 shall be deleted.

#### **Article 36**

Article 350 shall be amended to read:

“If in judicial protection proceedings against the decision by the Bank of Slovenia on the winding up of the bank or on extraordinary measure, the court establishes that grounds have arisen subject to which the decision might be abolished or its implementation suspended in accordance with the ZUS-1, the decision on the abolition or suspension shall not be issued but, by way of a court decision, the court shall establish that the decision is illegal and that conditions for winding up or extraordinary measure have not been given. The decision of the court on the illegality of the decision on the winding up of the bank or on the extraordinary measure shall not impact the effects of the decision on the winding up or on the effects of the extraordinary measure under this Act.”.

#### **Article 37**

The new Article 350a shall be inserted after Article 350, which shall read as follows:

##### **“Article 350a**

(protection of shareholders and creditors in case of a decision on extraordinary measures)

(1) Shareholders, creditors and other persons, whose rights have been affected due to the effects of the decision of the Bank of Slovenia on extraordinary measure, may demand the reimbursement of damages from the Bank of Slovenia under the consideration of Article 223a of this Act, if they prove that the damage, which was caused by the effects of the extraordinary measure, was higher than in the case if the extraordinary measure had not been imposed.

(2) Article 264 of the ZGD-1 shall not apply for the protection of the rights of shareholders and creditors in the case of a decision on the winding up of the bank or on extraordinary measure in relation to the Bank of Slovenia.

(3) If a lawsuit is lodged against the decision on the extraordinary measure under Article 347 of this Act, the court considering the indemnification claim on the basis of the first paragraph of this Article shall suspend the procedure until the court makes a decision in the judicial protection proceedings against the decision of the Bank of Slovenia.”

#### **Article 38**

A new third paragraph shall be added after the second paragraph of Article 353 and it shall read:

“(3) Notwithstanding the preceding paragraph, the decision on the winding up of a bank or the decision on the extraordinary measure shall be submitted to the bank and according to the rules that apply for personal delivery to all members of the bank’s management board.”.

The current third and fourth paragraphs shall be renumbered as the fourth and fifth paragraphs.

## TRANSITIONAL AND FINAL PROVISION

### Article 39

(1) The judicial protection proceedings initiated prior to the entry into force of this Act shall be concluded according to the rules that applied prior to the entry into force of this Act if the second to fourth paragraphs of this Article do not stipulate otherwise.

(2) If the bank’s management board on the basis of rules, which had been in force prior to the entry into force of this Act, lodged a lawsuit against the decision of the Bank of Slovenia, Article 32 of this Act shall apply for relations between the members of the management board and the shareholders of the bank regarding the enforcement of judicial protection rights against the decision on the extraordinary measure after this Act enters into force.

(3) If a decision on the appointment of a special administration was adopted in the last six months prior to the entry into force of this Act, and if the bank’s management board, whose other authorisations for the representation of the bank were terminated on this basis, did not lodge a lawsuit for enforcing judicial protection against this decision under the rules that were in force prior to the enforcement of this Act, the shareholders of the bank, whose total share amounts to at least one tenth of the bank’s share capital, may following the entry into force of this Act authorise one or several members of the bank’s management board, whose authorisations to represent the bank were terminated on the basis of the decision of the Bank of Slovenia, to lodge a lawsuit for enforcing judicial protection against the decision of the Bank of Slovenia on the extraordinary measure in 30 days after this Act enters into force.

(4) The provisions of Article 32 of this Act shall apply mutatis mutandis for the enforcement of judicial protection in accordance with the preceding paragraph.

### Article 40

Persons performing the function of the bank’s special administration member on the day when this Act entered into force shall report their financial situation in 15 days from the date when this Act enters into force.

### Article 41

This Act enters into force on the day following its publication in the Official Gazette of the Republic of Slovenia.