

III. EXPLANATION

Ad Article 1 (amendment to Article 4)

In this Article the Takeovers Act (abbreviated as Zpre-1) supplements the set of laws to which the Banking Act (Zban-1) refers to.

Ad Article 2 (amendment to Article 43)

The proposed amendment provides an exception to the second paragraph of Article 172 of the Companies Act (ZGD-1). Therefore, the bank shares are not subject to the rule that they must be denominated in 1 EUR or its multiple. Furthermore, the framework for the implementation of the share capital increase of the bank by in-kind contributions is more clearly set out – share capital increase by in-kind contributions is allowed only in respect to the additional measure for share capital increase under the conditions set out in Article 249c of the proposed amendment or in respect to share capital increase in the context of emergency measure in accordance to Article 262a of the proposed amendment. The implemented regulation defines in detail the assets which may be used as in-kind contributions with respect to individual additional measures – according to different circumstances related to grounds for share capital increase or according to circumstances concerning the investor.

Ad Article 3 (amendment to Article 44)

This Article determines the annulment of assembly's resolutions which are contrary to the measures imposed to the bank or shareholders by the Bank of Slovenia, or which are used for the reduction of effects or to bypass the purpose of such measure.

Due to confidentiality of measures, the jurisdiction of asserting annulment is granted solely to the Bank of Slovenia. The deadline for asserting annulment is in comparison to general arrangements for asserting annulment of assembly's resolutions under the Companies Act (three years after resolution entry into the register) shorter, it is namely one year.

Ad Article 4 (amendment to Article 52)

The amendment shall regulate the possibility that the ineligible holder of the qualifying share of voting rights in the share of voting rights or shares of the bank's capital lower than 10 percent for which he/she has not been given the permission from the Bank of Slovenia, may not exercise voting rights.

Ad Article 5 (addition to Article 53)

This Article defines in detail the possibility of compelling of the holder having banks share contrary to this Act through imposition of financial penalty to act according to the order on alienation of bank shares. Compelling through imposition of financial penalty is otherwise regulated in judicial and administrative enforcement proceedings with respect to the recovery of non-monetary obligations which due to the nature of the matter only the debtor is able to do (Article 226 of Enforcement and Securing of Civil Claims Act (ZIZ), Article 298 of Administrative Dispute Act (ZUS)).

The recovery of financial penalty shall be carried out in accordance to Article 378 of the Banking Act (Zban-1) determining that forcible recovery of financial penalty shall be carried out according to administrative enforcement proceeding (and not judicial, as it may be the case when enforcing other decisions of the Bank of Slovenia), whereas the enforcement shall be done by tax authority according to the procedure for the recovery of tax obligations.

Ad Article 6 (amendment to new Article 59a)

The Article sets out the circumstances for the exclusion of obligation to make mandatory takeover bids according to the Act governing takeovers. Next to examples set out in the Takeovers Act (Zpre-1), mandatory takeover bid is not required to be made by the holder who acquired bank shares with voting rights in the process of provision of capital adequacy on the basis of the supervisory board request. The obligation to make a mandatory takeover bid for such acquirers occurs at first subsequent acquisition of bank shares. The Article also sets out that the assumption from the third paragraph of Article 8 of Takeovers Act shall not apply if the controlling person is the Republic of Slovenia or in the case of companies in which the Republic of Slovenia has capital investments and these legal entities at the bank reached the takeover threshold due to the provision of capital adequacy at the request of the Bank of Slovenia or other competent supervisory authority.

Ad Article 7 (addition to Article 62)

The proposed provision clearly defines the obligation and the liabilities of the supervisory board of the bank to constantly ensure that the management board of the bank operates at all times with at least two members of the management board who actively and continuously ensure the management and representation of the bank in legal transactions and on this basis they shall also assume the responsibility for banks operations. The supervisory board shall therefore provide adequate solution to (temporarily or permanently) replace the member of the management board of the bank who does not perform his/her functions for a longer period (more than two months in total). The alternate member by appointment assumes all powers and responsibilities of the management board member on the basis of the Act for the time of the replacement.

Ad Article 8 (amendment to Article 65)

The amendment is editorial.

Ad Article 9 (amendment to Article 72)

The proposal contains the provision that the Bank of Slovenia may with the provision prohibit the supervisory board member of the bank to perform functions of the supervisory board member at the bank if it finds that he/she does not meet the conditions necessary for appointment (Article 71 and the first paragraph of Article 72). Provisions concerning the decision on permission withdrawal shall apply mutatis mutandis for the decision on prohibition of the supervisory board member to perform functions.

Ad Article 10 (amendment to Article 87)

A new ground shall be added for the termination of the bank's permission to perform banking services, namely only if the bank itself issues the statement that on a set date it will stop performing banking services.

Ad Article 11 (amendment to Article 88)

The amendment of the fifth paragraph regulates the position when on the territory of the Republic of Slovenia a bank from a member state intends to perform additional financial services which are not subject to the common regime of mutual recognition between member states and are generally also subject to different legislative regulation in member states. These are some additional financial services under Article 11 of the Banking Act (Zban-1) (payment system management services, pension fund management services, safe custody services and other similar services). On the territory of the Republic of Slovenia these services may only be performed by the bank of the member state that performs banking and mutually recognized financial services through the branch in the Republic of Slovenia. Since conditions to perform additional services are not coordinated at EU level, the bank of the member state must meet the same conditions to perform those services which apply to the banks with registered offices in the Republic of Slovenia, and therefore need to acquire the permission from the Bank of Slovenia to perform such services. In this part (for additional services) the same regime applies to the member states as it applies to the banks of third countries that perform services on the territory of the Republic of Slovenia through the branch.

If additional financial services are performed on the territory of the Republic of Slovenia as mutually recognized services on the basis of other regulations in the Republic of Slovenia (e.g. mediation at the sale of insurance policies), the requirement of the authorization from the bank of Slovenia may not be invoked for the provision of such services, however, in this case the services shall be performed on the basis of the permission of the supervisory authority in the country of registered office either through a branch or directly under the conditions for the provision of such services defined by another Act.

Ad Article 12 (new Articles 88a, 88b, 88c, 88č and 88d)**Proposed Article 88a**

This Article regulates a special regime of monitoring of bank investments into financial institutions with registered offices in the Republic of Slovenia or other member state, or into financial undertakings with registered offices in third countries. Investments into persons of non-financial sector have already been regulated in Article 169 and restricted to a maximum 15 percent capital share of that person. For investments into financial institutions exceeding qualifying holding in that institution, in relation to the effects of such investment a direct monitoring regime shall be implemented which is comparable to

monitoring of qualifying holding holders at the bank. The permission is therefore given to the bank for the acquisition of qualifying investment exceeding 10 percent, 20 percent, 1/3 or 50 percent (indirectly or directly) holding of the shares, share or other rights at voting or the capital of that person or less than 10 percent if that share enables relevant influence on the management of that person.

The third paragraph sets out the grounds for the rejection of the permission or in relation to Article 88c grounds for the withdrawal of the permission for a qualifying investment and namely if the ground for the rejection or withdrawal of the permission is if the bank does not establish adequate risk management in relation to considered investments, or if due to other circumstances the implementation of Bank of Slovenia's monitoring of the risks that the investment represent for the bank's operations has been made difficult.

Exceptions from the requirement to acquire the permission are defined in relation to investments that the bank acquires in its name and for a client's account in the context of performed services, and in relation to the acquisition of investments with respect to the realisation of insurances or the conversion of debt claims into shares in the context of compulsory settlement proceedings of an offeree company. In the event of the acquisition of a qualifying holding in the context of realisations of insurances due to recovery of debt claims or in the context of compulsory settlement proceedings of an offeree company, the exception shall apply only for the period of five years after the acquisition, whereas after this period the bank must acquire the permission for the qualifying investment.

With regard to investments into qualifying holdings of other credit institutions or financial undertakings in the Republic of Slovenia or other member state (insurance companies, reinsurance companies, funds management companies, pension fund companies, investment companies, collective investment undertakings and others) the monitoring of holders of qualifying holdings is implemented by supervisory authority competent for the monitoring of such institutions. The Bank of Slovenia issues the permission to a bank intending to acquire the qualifying holding in such an institution, it cooperates with the competent supervisory authority, therefore special regulation for the acquisition of qualifying holding in this case would not be appropriate.

Proposed Article 88b

This article sets out the termination of the permission for the qualifying investment according to the Act itself if, by the deadline set out in the decision, the acquirer does not acquire the qualifying investment in the share or the scope for which the permission has been issued, Article 51 of the Banking Act (Zban-1) defining the termination of the permission for the acquisition of the qualifying holding in the bank shall apply mutatis mutandis. If the bank reduces its qualifying holding under the share for which the permission has been issued and in the period of three months again increases its share to the adequate scope, the permission is terminated.

Proposed Article 88c

This Article sets out the conditions for the withdrawal of the permission to the bank for the qualifying investment. If the bank in the set period does not alienate the investment or does not implement adequate procedures of status restructuring in relation to this investment (change in legal organizational form, merger by acquisition, merger), legal assumption on unlawful acquisition of such investment arises with effects under Article 88č.

Proposed Article 88č

This Article defines in detail the possibility of compelling the bank in relation to the acquisition of the permission for the qualifying investment by imposing financial penalty. Compelling through imposition of financial penalty is otherwise regulated in judicial and administrative enforcement proceedings with respect to the recovery of non-monetary obligations which due to the nature of the matter only the debtor is able to do (Article 226 of Enforcement and Securing of Civil Claims Act (ZIZ), Article 298 of Administrative Dispute Act (ZUS)).

The recovery of financial penalty shall be carried out in accordance to Article 378 of the Banking Act (Zban-1) determining that forcible recovery of financial penalty shall be carried out according to administrative enforcement proceeding (and not judicial, as it may be the case when enforcing other decisions of the Bank of Slovenia), whereas the enforcement shall be done by tax authority according to the procedure for the recovery of tax obligations.

Proposed Article 88d

This Article regulates obligations of reporting on the request of the Bank of Slovenia on the basis of which the Bank of Slovenia may impose the system of monitoring and control of risks in relation to the investment of the bank into a financial institution or financial undertaking. Even though the Bank of Slovenia will be able to receive data on risks in relation to a certain investment also from the bank, the proposed regulation primarily addresses those examples when the bank on the basis of its entitlements based on the share would not be entitled to gain the requested data from the management of the financial institution or undertaking. Due to these limitations existing for shareholders or members in relation to management and access to confidential data or business secrets, it is essential that for the purpose of risk treatment at the bank, direct access to such data shall be allowed to the Bank of Slovenia.

Ad Article 13 (amendment of the title of chapter 3.4)

The Article supplements the title of the chapter 3.4.

Ad Article 14 (amendment to Article 102)

Additions to this Article are necessary to ensure the banks with registered offices in third countries the same treatment in relation to the provision of additional financial services under Article 11 of the Banking Act (Zban-1) on the territory of the Republic of Slovenia as it applies to the banks with registered offices in the Republic of Slovenia or with registered offices in any other member state. The bank with the registered office in the third country will be able to provide additional financial services on the territory of the Republic of Slovenia through a branch in the Republic of Slovenia if it acquires the permission from the Bank of Slovenia to perform such services.

Ad Article 15 (amendment to Article 103)

Additions and amendments to this article are necessary due to amendments in Article 102.

Ad Article 16 (new Articles 128a and 128b)

The new Article 128 regulates the exclusion of mandatory takeover bid in relation to the measures for credit risk management. The Article thereby defines that the bank which acquired the shares or other securities in a company to which the Takeovers Act (Zpre-1) shall apply (hereinafter: the Takeovers Act (Zpres-1)) is not obliged to make a mandatory takeover bid according to the Takeovers Act if the takeover threshold or the additional takeover threshold in the offeree company has been reached:

1. by the acquisition of securities of the offeree company on the basis of the realisation of insurances which have been subjected to securities of the offeree company if the purpose of this acquisition has not been the takeover of the offeree company, or
2. by the acquisition of securities of the offeree company on the basis of share capital increase of the offeree company with contributions if the bank has debt claims towards the offeree company.

The obligation to make the takeover bid occurs for the bank at first subsequent acquisition of securities of the offeree company if it is still reaching the takeover threshold at the offeree company.

Article 22a of the Takeovers Act already contains a similar provision. However, there are significant differences between the current Article of the Takeovers Act and the proposed new Article 128a.

Takeovers Act (Zpre-1)	The proposition of the Banking Act (ZBan-1)
The acquisition of shares in a company undergoing restructuring process (conversion, payment of the capital)	
<u>Article 22(3)</u> - for all creditors - only in compulsory settlement proceedings - exception applies either for shares acquired on the basis of conversion or for the shares in relation to the cash contribution in compulsory settlement proceedings	<u>Article 128a</u> - only for banks as creditors - also prior to the formal start of insolvency proceedings (early action) - exception applies only to share acquired by conversion
The acquisition of shares on the basis of the realisation of insurances (appropriation)	

<p><u>Article 22a</u></p> <ul style="list-style-type: none"> - the bank does not have voting rights based on <u>these</u> shares - after the expiration of 2 years the loss of voting rights based on <u>all</u> shares except if a takeover bid has been made 	<p><u>Article 128a</u></p> <ul style="list-style-type: none"> - the bank may enforce voting rights of acquired shares - after the expiration of 5 years from the acquisition of the voting rights loss base on <u>these</u> shares except if a takeover bid has been made (in every example it keeps voting rights form all other shares)
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The adoption of the new Article 128a shall contribute to the reversal of the trends of deteriorated credit portfolios of the banks since it is necessary to eliminate the obstacles in the legislation which hinder or deter the banks from timely and efficient cooperation when restructuring companies. The proposed regulation in Article 128a in comparison to present arrangements in the Takeovers Act (Zpre-1) expands the area of effects of exceptions also to the phase prior to the occurrence of insolvency and thereby encourages the banks to be involved in restructuring processes on the basis of claim conversion into equity holding with the management of companies. Also in the realisation of insurances with the appropriation of securities it is important that the banks may ensure the recovery of its debt claims through the management of companies.

Ad Article 17 (amendment to Article 190)

The amendment is necessary that the prohibition of profit pay-out due to the compliance to requirements in relation to capital adequacy is established also in cases when undisbursed profit due to capital requirements is necessary due to the provision of adequate internal capital of the bank defined in accordance to Article 126 of the Backings Act or in the context of a dialogue on the basis of Article 222a or on the basis of the provision from the second paragraph of Article 248 of that Act and not only due to minimum capital according to Article 136.

Ad Article 18 (amendment to Article 190a)

Similar to the prohibition of profit pay-out on the basis of Article 190, based on the proposed provision in the case of hybrid instruments, the prohibition of pay-out is determined on the basis of those instruments also in the case if, due to these pay-outs, the fulfilment of conditions in relation to the provision of adequate internal capital of the bank on the basis of Article 126 or 122a or on the basis of the provision from the second paragraph of Article 248 of this Act would be endangered.

Ad Article 19 (amendment to Article 191)

The amendment is necessary for the establishment of direct responsibility of the management board also in relation to the measures for the provision of adequate capital either by the provision of adequate new capital or by the reduction of risks taken into account for the provision of capital requirements.

Ad Article 20 (amendment to Article 217)

The jurisdiction of the Bank of Slovenia for supervisory board member monitoring is defined due to the amendment of Article 72 of the Banking Act.

Ad Article 21 (amendment to Article 222)

The addition defines more clearly the jurisdiction of the Bank of Slovenia to estimate the adequacy of amounts, types and distribution of internal capital of the bank in relation to risks of the bank.

Ad Article 22 (new Article 222a)

The addition to Article 222a is necessary that within the supervisory authorities of the Bank of Slovenia also a special procedure is determined in relation to individual banks when defining and estimating the risks and defining the adequate internal capital of the bank in accordance to Article 126. The assessment of adequate internal capital is determined on the basis of risk identification and assessment procedures at the bank which are determined by taking into account different circumstances and facts significant to individual banks. Since mentioned processes are strictly individualised for a certain bank, the process of assessing adequate internal capital at individual banks shall be within the monitoring strictly flexible and, in the relationship between the Bank of Slovenia and the bank, it will allow the possibility of amendment to the assessment in relation to new knowledge about new or current existing circumstances and facts affecting the assessment of risks at

individual banks. The assessment of the adequate internal capital helps to establish the (minimum) requirements in relation to the provision of adequate internal capital under Article 126 of the Banking Act, whereas this assessment does not establish any findings or conclusions in relation to possible violations of the bank in relation to this. Special legal protection in the adequate internal capital assessment proceedings on the basis of Article 222a is therefore not necessary, however the latter is ensured only at the procedure against the order on elimination of violations or on additional measures issued by the Bank of Slovenia in the event of bank not taking into account the assessment of adequate internal capital created by the Bank of Slovenia.

Ad Article 23 (new Article 223a)

The provision defines the basis of responsibilities of the Bank of Slovenia or persons acting on its behalf when implementing monitoring or other jurisdictions under this Act (persons with special authorisations on the basis of Article 253 or general authorisation on the basis of employment contract).

The provision is necessary for establishing appropriate basis for professional and timely action of the Bank of Slovenia and persons acting on its behalf within legally defined authorisations. The timeliness of action in accordance to authorisations can only be achieved if conditions for sovereign action have been established for the Bank of Slovenia acting as the supervisory authority on the basis of established probability in relation to relevant facts and circumstances and therewith associated exclusion of responsibility for possible deviations when assessing such probability. Exclusion of responsibility may be allowed only if the Bank of Slovenia has acted with due diligence when determining relevant circumstances or when assessing the probability of the occurrence of such circumstances.

Ad Article 24 (addition to Article 235)

The addition is required in order to hire experts to perform individual tasks also when exercising other jurisdictions of the Banks of Slovenia according to this Act when this is necessary in relation to concrete circumstances due to larger efficiency of monitoring or other jurisdictions of the Bank of Slovenia.

Ad Article 25 (amendment to Article 247)

The amendment to this Article is required for the expansion of jurisdictions to impose additional measures to the examples when the probabilities of the occurrence of violations which are the basis for the imposition of additional measures at the bank have been found. In relation to violations connected to capital adequacy and adequate liquidity position of the bank, the proposition in the new third paragraph determines also irrefutable presumption when the probability of occurrence of those violations has been given.

The amendment to Article 247 furthermore clearly defines the term and the goals of additional monitoring measures as well as the grounds for the imposition of those measures. All measures with which the bank is instructed to actively manage in relation to identified violations from the second paragraph are defined as additional measures. Amendments for the definition of violations which are the basis for the imposition of additional measures are necessary for the provision of internal coordination of the Act associated with the definition of bank's obligations.

Ad Article 26 (amendment to Article 248)

This Article contains amendments for the definition of individual additional measures necessary for clearer definition of jurisdictions when determining activities and procedures used for the elimination of violations at the bank. Since using additional measures prejudices bank's autonomy or its authorities in relation to the definition of manner or measures for the elimination of violations, it is necessary that the Act clearly defines the limits or jurisdictions of the Bank of Slovenia especially in cases where the use of additional measures directly or indirectly prejudices the rights of third persons (e.g. shareholders, employees) or in the cases where the additional measures give direct instructions to the bank's authorities in relation to operations of the bank. This is relevant due to the fact that additional measures imposed to the management or supervisory board of the bank create direct basis for identifying possible violations of obligations of their individual members. The new fourth paragraph additionally regulates the responsibilities of the bank to impose adequate procedures for the adjustment of employment contracts or collective agreements when this is necessary due to

elimination of violations in relation to the regulation of remuneration by adopted policies or risks of the bank.

Ad Article 27 (amendment to Article 248a)

Addition in the second paragraph regulates the possibility of imposing additional measures in relation to the prohibition of pay-outs of hybrid instruments prior to their maturity also in cases when the bank does not ensure adequate internal capital in accordance to its own assessment or assessment on the basis of Article 222a or the second paragraph of Article 248.

Ad Article 28 (new Article 248b)

This article sets out the basis for the start of the merger or division of the bank at the request of the Bank of Slovenia if the bank alone will not be able to ensure requirements in relation to capital adequacy or liquidity position. The measure under Article 248b is directed only against the bank or the management board of the bank when there is doubt on its ability to operate on its own in the future, whereas it does not affect the position of subjects participating in this kind of procedure. Procedures of status restructuring are in this case implemented according to general rules applying for status restructuring of companies. The efficiency of the measure in question may be increased by measure of appointment of extraordinary authorised representative of the bank which ensures objectivity when creating analysis and suggesting strategic decisions with respect to merger or division to the assembly for approval.

Ad Article 29 (new Articles 249a to 249l)

Proposed Article 249a

The proposed Article 249a defines the conditions for the imposition of additional measures in relation to bank's share capital increase. With the additional measure the Bank of Slovenia determines minimum requirements in relation to share capital increase at which the Bank of Slovenia may determine also some elements of assembly's resolution which the management board of the bank must take into account at the general meeting convention. In relation to the definition of the issue value of new shares, the Bank of Slovenia may demand from the management board to acquire the assessment of an independent authorised assessor of value of enterprises prior to the definition of issue value and such value shall be taken into account at the formation of the proposal of assembly's resolution. This measure in particular prevents that the management board of the bank affects (un)successful recapitalization when setting the issue value of shares too high.

Paragraphs five to eight regulate the situation prior to the implementation of additional measure of the Bank of Slovenia. Prior to the start of procedure for the issuance of the decision used for the imposition of measures for share capital increase, the Bank of Slovenia must notify two biggest shareholders at the bank that there is a necessity to increase the share capital of the bank. The shareholders may demand the convention of the general meeting in the set period, notwithstanding the provision of the Companies Act (ZGD-1), meaning in less than 30 days prior to the general meeting of shareholders and they may suggest the adoption of the resolution on share capital increase of the bank or other measures for the provision of capital adequacy of the bank. Additionally, it is determined that provisions of the Companies Act governing deadlines for the enforcement of resolutions adopted at this general meeting of the bank shall not apply in this case.

Furthermore, in the event when the previously described general meeting is not successful, the same procedure shall apply *mutatis mutandis* to the owner of the bank («ultimate beneficial owner») and in the next step also to the Republic of Slovenia.

Proposed Article 249b

This Article regulates special rules in relation to the convention and decision-making connected to the proposal for the share capital increase of the bank which was designed by the management board in accordance to the provision from Article 249a. There are certain limitations at assembly's decision-making connected to the rights of shareholders in relation to the inclusion of shareholders' proposals to assembly's agenda with respect to separated sessions and the cost of special auditor. Special rules are determined also in relation to the majority necessary for the approval of the resolution on share capital increase. Thereby the proposal on the approval of resolution on share capital increase on the basis of the provision of the Bank of Slovenia and on statute amendments necessary for the

implementation of such increase as well as on possible exclusion of priority rights of shareholders to new shares sets out the approval of the resolution by a simple majority, when deciding on represented capital if represented capital is at least half of the subscribed capital with voting rights, as mandatory requirement. If at least half of the subscribed capital is not represented by voting rights when voting, the resolution is approved with two thirds at decision-making of the represented capital with voting rights. Above mentioned requirements follow minimum requirements in relation to applicable approval of increase or exclusion of priority right and statute amendments under the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1–13). Requirements in relation to applicable approval of the resolution are in the example in question applicable notwithstanding any different provisions of the statute connected to decision-making on these matters which are otherwise used in the regular proceedings of share capital increase or statute amendments.

Proposed Article 249c

The proposed arrangement sets out the possibilities of share capital increase of the bank by in-kind contributions when share capital increase is necessary for the provision of capital adequacy of the bank in accordance to the order of the Bank of Slovenia on share capital increase. Increase with in-kind contributions according to this Article is allowed only if the bank gains the permission from the Bank of Slovenia for share capital increase with in-kind contributions prior to this action. Share capital increase with in-kind contributions is therefore an exception which may be used only in relation to share capital increase on the basis of the provision under Article 249a. The proposal in relation to the possibility of share capital increase with in-kind contributions takes into account the fact that in harsh conditions in capital markets and with reduced liquidity, recapitalization with new money is not always practicable in sufficient scope.

Share capital increase of the bank shall be carried out with in-kind contributions whose subjects are also debt claims of individual creditors of the bank if these creditors agree to restructuring of their claims into shares of the bank's capital. The consent of creditors must be provided in the written form which ensures unconditional and immediate transfer of claims, which are subject of in-kind contribution, to the bank.

Proposed Article 249č

At conditional share capital increase of the bank in relation to the measures under Article 249a, the second paragraph of Article 343 of the Companies Act, defining that the smallest issue value of the shares issued in the procedure of conditional share capital increase of the bank may not exceed half of the share capital that exists during the course of concluding of the share capital increase, shall not be used. If the management board of the bank suggests the assembly to conditionally increase the share capital in relation to point 1 of the first paragraph connected to the issuance of convertible bonds, notwithstanding different provisions of the Companies Act, the majority of votes shall be requested also for the adoption of resolution on issuance of convertible bonds according to this Act, whereas the majority is necessary for applicable adoption of resolution on share capital increase according to this Act, which means the simple majority is necessary at decision-making of the represented capital if it represented at least half of the subscribed capital with voting rights, if not, two-thirds for making capital calls represented by voting rights.

Proposed Article 249d

Due to legal certainty, this Article expressly regulates this Act as *lex specialis* in relation to the arrangement in the Companies Act, also in relation to the arrangement of irrefutable grounds at the trial of assembly's resolutions adopted by majority and under conditions defined by the Banking Act. For the purposes of decision-making on share capital increase or other measures on which the assembly decides in relation to measures on the basis of the order under Article 249a, the provisions of the Companies Act or the statute, only with respect to issues not regulated by the Banking Act, shall apply. In the event when the priority right of shareholders to new shares is excluded, the shareholders also may not contest the resolution on share capital increase connected to the issue value of new shares.

Proposed Article 249e

This Article defines the jurisdictions of the Bank of Slovenia to appoint an extraordinary authorised representative at the bank who performs certain functions at the bank due to efficient implementation of measures for the elimination of identified violations or for the improvement of operations in accordance to the rules on risk management in the bank. Authorisations and the scope of action of the extraordinary authorised representative shall be defined at the time of every decision on appointment.

Proposed Article 249f

The function of the extraordinary authorised representative is first of all to provide professional support and advice to authorities and working bodies at the bank connected to the performance of activities for the elimination of violations identified by the Bank of Slovenia. The extraordinary authorised representative may furthermore be appointed to perform functions of in-depth and directed review of bank's operations in certain areas and the preparation of a proposal for the elimination of deficiencies and the improvement of operations which is the basis for efficient and prompt action of the bank and indirectly of the Bank of Slovenia. The function of the extraordinary authorised representative provides objective, constant and professional support to the bank in the form of design and implementation of measures for the elimination of violations and the improvement of the bank's operations in the area of risk management. The function of the extraordinary authorised representative provides higher efficiency at the elimination of violations particularly in circumstances when there are conflicts of interests at the bank which hinder efficient and professional preparation of solutions in favour of the bank.

The person appointed as the extraordinary authorised representative has relevant professional qualifications in the area and in relation to the performance of functions for which he/she has been appointed to. The appointment of extraordinary authorised representative is limited to maximum one year with the possibility of extension for one more year if there are reasonable grounds for this.

The appointment of extraordinary authorised representative by rule does not affect authorisations and the position of other people appointed by the bank or authorities of the bank to perform certain functions. Special arrangement applies to examples of appointment of the extraordinary authorised representative with authorisations of the management board member. The Bank of Slovenia thus appoints the extraordinary authorised representative with authorisations of the management board member of the bank if, in relation to individual or more members of the management board of the bank, grounds of incompetence and inexperience have been identified due to which it is possible to withdraw the permissions to perform functions of the management board member, or if the management board of the bank does not have sufficient number of members who actively perform their functions (conditions have been met for the appointment of replacement management board member, whereas that member has not been appointed).

Proposed Article 249g

This Article regulates special rules on the appointment of extraordinary authorised representative with authorisations of management board member of the bank and effects of this appointment to the arrangement of legal representation of the bank in relation to existing management board members of the bank and in relation to third persons.

Proposed Article 249h

Since the activities of the extraordinary authorised representative are done in favour of the bank, the Act defines that costs and compensation for the work shall be paid by the bank.

Proposed Article 249i

This Article defines the legal framework of activities of the extraordinary authorised representative in accordance to applicable regulations, professional standards, internal regulations of the bank and instructions of the Bank of Slovenia. These standards are also responsibility criteria of the extraordinary authorised representative when performing his/her functions at the bank and in relation to the Bank of Slovenia.

Proposed Article 249j

As the decision of the Bank of Slovenia (and not the contract) is the legal basis for the operation of the extraordinary authorised representative, the Act also defines the rules in relation to the enforcement of responsibilities of the extraordinary authorised representative with respect to

performing his/her functions at the bank. The arrangement of responsibility is particularly essential in relation to performing functions of the management board member of the bank, as in this case it is necessary to exclude the use of provisions on responsibilities of management board members on the basis of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP), or the consequences which are for the management board members of companies undergoing insolvency proceedings determined by Article 10a or 10b of the Companies Act i.e. the limitations on establishing, managing and monitoring of companies as well as withdrawal of authorisations or entitlements for operations management and the dismissal from the position of the supervisory board member.

Proposed Article 249k

This Article sets out special monitoring measures imposed if violations have been identified at the bank in relation to the provision of capital adequacy or adequate liquidity position due to which it is possible to withdraw the licence from the bank to perform banking services in accordance to Article 250, or there is a high probability of the occurrence of such violations. Special monitoring measures eliminate the grounds for the permission withdrawal from the bank which would otherwise be required to stop performing banking services. This takes into account mainly interests of depositors and other users of banking services to be able to provide the continuity in the implementation of such services to users and to avoid the negative consequences for other financial market participators that may arise due to the withdrawal.

Proposed Article 249l

This Article sets out certain types of special monitoring measures and conditions for their imposition. Special monitoring measures ensure direct influence of the Bank of Slovenia to business decisions of the management board with instructions in relation to the management of certain operations and the disposal of bank's assets. Special monitoring measures have direct effects on business relations of the bank with third persons and, in this respect, they act as an objective, external fact which the bank may not influence.

The measure of restriction of transfer of monetary assets which would influence the liquidity position of the bank may therefore be restricted only in relation to transfer of monetary assets between the companies where the arrangement of effects of withholding the payments is subject to agreements at the group level, and not in relation to other creditors of the bank. Therefore, such measure limited to maximum three months does not represent disproportionate interference with the position of contractual parties as the effects of withholding should be assessed in relation to their interconnections and the performance and the liquidity management in the group. The rights affected by the measure of withholding transfer of monetary assets by which emergency maintenance of liquid assets at the bank is ensured, mostly due to the provision of regular transfers to depositors, which is vital for the maintenance of trust of depositors in relation to the safety of their deposits and the trust of the public into the stability of the banking and financial system.

Proposed Article 249m

Special monitoring measures are imposed in the form of the order in the procedure for the imposition of orders for the elimination of violations.

Ad Article 30 (amendment to Article 250)

The amendment adds the ground for the permission withdrawal which is the difficulty of bank's monitoring which is identified especially when the bank has business or ownership relations with other companies or individuals in the manner that interconnected business conduct and influence directly and consequently hinder the performance of efficient monitoring of the bank's operations.

Ad Article 31 (amendment to the title of chapter 7.7)

This article changes the title of chapter 7.7 to read as follows: »Emergency measures for the provision of financial system«.

Ad Article 32 (addition to Article 253)

Besides existing emergency measures a new emergency measure is set out – the transfer of assets and obligations. Existing emergency measures are reformed in the manner that all are assessed according to the same criteria (escalation is eliminated).

Ad Article 33 (new Article 253a)

The Article sets out individual (subjective) circumstances related to the bank which may (when taking into account objective circumstances under Article 254) lead to emergency measures. It is explicitly highlighted that prior to the implementation of emergency measures all other procedures for the provision of capital adequacy suggested by the Act should be used (special measures; measures from shareholders of the bank, their owners or the state; additional measures).

Ad Article 34 (amendment to Article 254)

The amendment sets out the conditions for the imposition of emergency measures. The competence of assessment of financial stability hazards is entrusted to the Bank of Slovenia which must comply with certain criteria mentioned in the second paragraph.

Ad Article 35 (amendment to Article 255)

The notification of supervisory authorities is required in relation to the imposition of any emergency measure and not only the measure of special administration.

Ad Article 36 (new Articles 255a and 255b)**The proposed Article 255a**

The jurisdictions of the supervisory board and the assembly of the bank are transferred to the Bank of Slovenia, whereas the jurisdictions of the management board are terminated only if the measure for the appointment of special administration is imposed to the bank (together with other measures or as an individual measure).

The proposed Article 255b

The termination of emergency measure procedure eliminates the effects of emergency measures, especially the effects in relation to jurisdictions of its bodies.

Ad Article 37 (amendment to the title)

Article 37 adds the new title to read as follows: »7.7.1. Special administration«.

Ad Article 38 (amendment to Article 256)

The Article defines the effects for the appointment of special administration to represent the bank.

Provisions on extraordinary authorized representative with authorisations of management board member shall apply to special administration members. The appointment of special administration as a measure has its meaning particularly in the termination of all authorisations to the bodies of the bank – management board, supervisory board and the assembly. With the appointment of special administration a new body is set out to manage and represent the bank – special administration, whereas special administration members may together or on the basis of special authorisation also individually represent the bank.

Ad Article 39 (amendment to Article 258)

Amendments due to general provisions in relation to emergency measure effects.

Ad Article 40 (deletion of Article 261)

Deletion due to the replacement with a different arrangement on the jurisdiction of decision-making on recapitalization in emergency measures conditions according to Article 262a.

Ad Article 41 (new title)

This Article adds a new title which reads as follows: »7.7.2. The sale of all shares of the bank«.

Ad Article 42 (amendment to Article 262)

The proposed amendment changes the measure of forcible sale of shares for the shareholders account in relation to the arrangement of the sale at a public auction. The public auction for the sale of shares at the bank does not ensure adequate conditions for the archival of optimum conditions for the sale of all shares of the bank. In the bidding process the measure for the sale of all shares establishes conditions for negotiations with bidders which will be prepared to ensure the most convenient conditions of the sale for the shareholders as well as for the bank, which with the sale of the share as

a whole gains a new strategic owner. The proposal furthermore sets out the examples of direct contract conclusion on the sale of shares and namely in urgent cases when that sale may be performed in an organized market according to the trading rules applied at that market.

Ad Article 43 (new title)

This article adds a new title which reads as follows: »7.7.3. Share capital increase of the bank.«.

Ad Article 44 (amendment to Article 262a)

The arrangement in this Article is supplemented with the expansion of jurisdictions of the Bank of Slovenia that, instead of shareholders, decides on share capital increase of the bank with new in-kind contributions appropriate for share capital increase of the bank on the basis of Article 249c as well as with monetary contributions (and not only with in-kind contributions whose subject are debt claims of the creditors towards the bank). At the same time, the Bank of Slovenia may instead shareholders also decide on the reduction of share capital increase of the bank in order to cover losses. The amendment also in detail defines the jurisdictions of the Bank of Slovenia in relation to share capital increase proceedings of the bank.

Ad Article 45 (new Articles 262b to 262h)

Proposed Article 262b

The Article proposes the arrangement of new emergency measure “the transfer of assets and obligations of the bank” which corresponds to the measure “purchase and assumption” as other legal systems call it in the context of bank rescues. It is a measure on the basis of which the supervisory body transfers assets of the bank to the acquiring company, the latter then as a compensation for such acquired also assets transfers a part of obligations of the bank towards its creditors so that the balance of acquired assets and obligations equals zero.

The proposed measure ensures mainly the possibility of the supervisory body to transfer certain assets and obligations, in relation to which it estimates that they need to be treated separately from other assets and obligations of the bank, to the acquiring company – either the existing company or the newly established company. As this is the transfer of assets and obligations of the bank which do not change corporative relations at the bank, but purely ensure financial restructuring of the bank (restructuring of the balance), no legal activities are necessary to perform these operations, however mainly an appropriate framework needs to be ensured from the point of view of effects to concluded contractual relations from which entitlements or obligations of the bank arise which are the subject of the transfer to the acquiring company.

The proposal is not limited in relation to the nature of transfer of assets or obligations – transfer on the basis of the decision may be implemented either according to the principle of the sale of assets to the acquiring company instead of the payment and at the same time acquisition of the corresponding part of obligations of the bank (purchase and assumption), or as the transfer of assets of the bank to the acquiring company as the payment of (in-kind) contributions at which the company simultaneously also acquires the corresponding part of obligations of the bank towards its creditors (assets of the bank in the form of debt claims are converted into equity capital at the newly established company and as such create different effects at the calculations of the bank’s capital in order to meet capital adequacy).

Obligations or assets which are the subject of the transfer are determined in the decision on transfer, whereas the Bank of Slovenia is required to take into account mainly the circumstances of the concrete example and goals in the context of bank rescue – either the continuation of bank’s operations or compulsory liquidation or bankruptcy during which the obligations towards secured creditors, priority creditors, depositors and other unsecured creditors (relatively) are transferred to the acquiring company together with the asset corresponding to the value of those obligations. The subject of transfer may therefore be any (material or obligational) property rights or obligations of the bank except the obligations to shareholders and obligations towards subordinated creditors which due to the nature of their obligations participate equally as the shareholders when covering losses of the bank.

In the context of assets and obligations it should be ensured that the shareholders and subordinated creditors primarily cover the losses of the bank – in the event when the transfer of assets and

obligations is implemented with the purpose of dissolution of the bank. Otherwise, when the purpose of emergency measures is that the bank is maintained as a functioning undertaking, the shareholders (and subordinated creditors in relation to contractual arrangements) cover the losses under the emergency measure by the reduction of share capital of the bank due to the coverage of losses, whereas by simultaneous share capital increase the share capital for the provision of capital adequacy of the bank is ensured (the proposition of the amended first paragraph of Article 262a).

Proposed Article 262c

This Article sets out the rules for determining the value of assets and obligations which are the subject of the transfer. In the examples when the speed of action is significant to be able to ensure the maintenance of key activities of the bank and the implementation of measures with minimum effects to public opinion and consequently to the stability of the financial system as a whole, it is necessary to provide the effects of transfer already on the basis of estimated value of assets and obligations. The final assessment is then determined on the basis of the assessment of the authorised assessor of the value of enterprises latest in the period of 6 months after the issuance of the decision on transfer. In order to maintain the net principle of transferred assets and obligations, it must be enabled that after the receipt of the assessment of the authorised assessor of the value of enterprises a subsequent transfer of assets or obligations be carried out.

Proposed Article 262č

The Article regulates the compensation for transfer provided by the acquiring company on the basis of the decision on transfer. The compensation must ensure appropriate equivalent of positive balance of the asset which is transferred at the moment of transfers of assets. The compensation for transfer may be provided in the form of monetary compensation or securities whose issuer is the acquiring company or its parent company.

Proposed Article 262d

The proposed Article determines that the obligations may only be transferred to another bank. Besides that, the proposition also regulates the jurisdictions of the Bank of Slovenia in relation to those acquiring companies which actually are not under the control of the Bank of Slovenia – jurisdictions of monitoring are in this case limited to the fulfilment of goals of emergency measures.

Proposed Article 262e

The proposed regulation regulates the effects of transfer and obligations to the acquiring company. The definition of the effects of transfer of assets is necessary in order to exclude the effects of general regulations of contractual relations on the basis of the Obligational Act, or the effects of potential special regulations in individual contracts which limit the transferability of assets or obligations. If such justifications (especially the requirements of the acquisition of the permission for transfer) remain applicable, this would represent an obstacle for the efficient implementation of bank's rescue and consequential public interest hazard. Despite that this represents essential interference with contractual relations, mainly with the position of creditors (depositors), such intervention is among other things justified due to the fact that the transfer is done also in the interest of creditors which therewith acquire a new contractual partner which shall be able to meet agreed contractual obligations (unlike the bank over which the proceedings of compulsory liquidation or bankruptcy shall be implemented).

In the event of debtors of the bank, the transfer of interference with their contractual justifications is only within the scope when the contract explicitly defines the prohibition of transfer of debt claims of the bank to another acquirer, however also in this case the interest of individual debtors may not prevail over the public interest in order to provide the stability of financial system.

An important aspect of the transfer of assets and obligations to the acquiring company is also the regulation which to the acquiring company provides the possibility to exercise the same entitlements as the ones applicable to the bank at the moment of transfer of assets and obligations – therefore in relation to capacity to bring proceedings, implementing the lapse of time and similar.

Proposed Article 262f

The proposed Article sets out the effect of transfer to contractual relations under which the rights or debt claims arise which are the subject of transfer – thereby together with the debt claims also other entitlements (particularly capacity to bring proceedings) are transferred to the acquiring company which are defined in the contract in relation to the implementation of debt claims or fulfilment of obligations.

At the same time an extremely important provision is the one determining the annulment of the contractual arrangement on the basis of which the contractual parties might interpret the transfer of assets in the context of emergency measures as the basis for withdrawal from the contract («event of default»). The exclusion of the use of such clauses in the event of transfer on the basis of emergency measure is required to ensure the conditions for the continuance of acquiring company's activities related to the acquired assets and obligations. At the same time it should be noted that the effect of mentioned provision is ensured only in the case if a Slovenian court would consider the legitimacy of annulment.

Proposed Article 262g

The Article regulates the measures implemented against the bank in relation to purposes of emergency measures. When emergency measures are implemented with the purpose for the bank to continue its operations with amended conditions (after implemented recapitalization or the sale of shares), a provision on termination of emergency measures proceedings on the basis of the proposed Article 255b is issued after the cessation of the reasons for emergency measures.

Proposed Article 262h

For the Bank of Slovenia emergency measures include emergency activities which require cooperation of potential investors. Due to the implementation of these measures it is necessary to provide to the Bank of Slovenia the exemption from obligations of protection of confidential information of the bank acquired on the basis of its jurisdictions when implementing monitoring of the bank within the scope necessary for the implementation of such measures and necessary activities.

Proposed Article 262i

Exclusion of mandatory takeover bid of a potential investor, who would on the basis of emergency measures proceedings acquire the bank shares in the emergency measure proceedings with the sale of shares, is necessary since the sale (or the acquisition) of bank shares in mentioned examples is necessary due to the maintenance of the financial system stability, whereas at the same time all acquirers of shares in the compulsory sale proceedings for the shareholders' account (since they are the subject of the sale of all shares of the bank) are in the same position – they independently and freely decide on the acquisition of shares and the share that they shall acquire (the acquisition of shares is in this case similar to the acquisition at the primary market). To exclude speculative effects of the acquisition of shares (under the assumption of subsequent sale of shares in the context of mandatory takeover bid), the obligation of the acquirer of the biggest package of shares needs to be excluded. At the same time it shall be noted that potential mandatory takeover bid would constitute financial burden to the acquirer which, at the assumption of subsequent emergency recapitalization of the bank for regular operations, represents unwarranted depletion of such investor and the possibility of speculative purchases of bank shares in the context of compulsory sale.

For these reasons, the exclusion of mandatory takeover bid for the investor must also be defined for the examples of indirect acquisition of securities of offeree companies on the basis of which the acquirer might eventually reach the takeover threshold on the basis of the Takeovers Act. The fact is that in their portfolios the banks have a lot of securities of the companies to which the requirements of the Takeovers Act are applicable, and that would, due to indirect acquisition on the basis of the acquisition of bank shares, represent an obligation to the investor to make a takeover bid for the rest of securities of that company, even though the investor with (indirect) acquisition has not had the intention to take over the offeree company.

Ad Article 46 (deletion of Articles 264 and 265)

Deletion of Articles 264 and 265 is necessary since the applicable regulation is contrary to the Directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes which allows repayment of guaranteed deposits only if conditions have been met for the repayment i.e. the start of bankruptcy proceedings and not prior to that.

Ad Article 47 (amendment of Articles 310)

The Article proposes deletion of provisions which determine that for the purpose of determining the guaranteed deposit, the deposit reduces investor's outstanding obligations towards the bank which have matured until the day of bankruptcy of the bank. Simply said, this would represent the guarantee for deposits under gross and not net principle as it does now. This part denotes used option of the existing directive which has otherwise been used in approximately half of the countries. The proposal of the new directive namely still allows »set-off« or netting (however, unlike the existing directive it limits it to mature debt claims in the manner that the reduction of all debt claims (also the mature ones which are not yet due) will not be possible anymore).

In recent times the "gross principle" has been proposed in all variants of Act proposals for the area of guarantee and as we know this method is also supported by the majority countries (faster data preparation, less legal complications, greater understanding from investors).

According to the data from the banks as per 31st December, 2011, the investors, whose deposits have been guaranteed, had in total 17,620,418 thousands of "gross deposits" and 17,603,919 thousands EUR of "net deposits". Currently guaranteed deposits (net deposit of the investor up to 100,000 EUR) amount to a total of 14,901,208 thousands EUR. Since the scope of gross deposits is higher than the scope of net deposits only for 0,09%, we estimate that the proposed amendment would also cause insignificant increase in the scope of guaranteed deposits. It is not possible to calculate this, since the calculation of guaranteed deposits may be done with concrete numbers on the basis of data on deposits of individuals (in this case the limitation 100,000EUR would need to be used per gross deposit of an individual and then added).

Ad Article 48 (amendment of Article 311a)

The amendment is necessary due to the coordination with the amendment in Article 310.

Ad Article 49 (amendment of Article 313)

The amendment is necessary due to the coordination with the amendment in Article 310.

Ad Article 50 (amendment of Article 315)

In the case of the bankruptcy of the bank or the savings institution, the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) enables the acquiring bank, for the purpose of repayment of guaranteed deposits, a free access to data on transaction accounts of natural persons which are being processed in the Register of transaction accounts (RTR) in accordance to the provision of the Payment Services and Systems Act (ZPlaSS); the fifth paragraph of Article 146 of the mentioned Act determines tax number, name and surname or the address of a natural person for the search of natural persons. To provide efficient implementation of access to mentioned register (especially in the shortest possible time), it is necessary to ensure that the acquiring bank performs searches in the register of transaction accounts with the use of tax number of a private individual.

Ad Article 51 (amendment of Article 320)

Since the provision of the Bank of Slovenia on findings of the conditions for the start of bankruptcy proceedings is the last and *ultima ratio* measure of the bank's supervisor, another condition has been added for the start of those proceedings and that is the measure of the exhaustion of all other measures which are available to the Bank of Slovenia.

Ad Article 52 (amendment of Article 329)

With this amendment debt claims in relation to guaranteed deposits have improved position that they have in the bankruptcy proceedings against the bank since they are treated as priority claims.

Ad Article 53 (amendment of Article 329a)

The Article sets out the possibility that a legal person for the management of debt claims of the bank sells the assets of the debtor in bankruptcy which have been given as a collateral for debt claims which the debtor in bankruptcy transferred to the bank, whereas the bank transferred it to the mentioned legal person.

The legal person for the management of debt claims of the bank must announce the sale of assets acquired as collateral when in the bankruptcy proceedings files a claim against the insolvent debtor whose asset has been given as collateral. From the announcement of the sale of assets onwards the legal person for the management of debt claims is not entitled to the repayment of that debt claim from the bankruptcy estate.

If the insolvency administrator, other creditor of the insolvent debtor or insolvent debtor in accordance to the Act governing the bankruptcy of companies dispute the claim for which the legal entity for the management of debt claims of the bank announced the sale of assets given as collateral, this shall not affect its entitlement to the sale.

If the court concludes in a lawsuit that there is no debt claim from the legal entity for the management of debt claims of the banks, the legal entity for the management of debt claims of the banks must return the assets, given as collateral for the debt claims for which the court decided it does not exist, back to the bankruptcy estate. If the legal entity for the management of debt claims of the banks has already alienated those assets, the legal entity for the management of debt claims of the banks must return the assets back to the bankruptcy estate which correspond to the received purchase price or fair value of the alienated assets if the latter is higher than the received purchase price. The fair value is the value determined in accordance to the rules for the assessment of assets contained in the Act governing the bankruptcy of companies.

The legal entity for the management of debt claims of the banks shall notify the insolvency administrator in writing in three working days after the sale of assets about the sale and the amount of unpaid balance of the debt claims. After the notification is received, the insolvency administrator updates accordingly the final list of proven claims. The prohibition from the second paragraph of this Article shall no longer be applicable from the date of the receipt of notification.

The legal entity for the management of the debt claims of the banks must return the proceeds from the sale of collateral exceeding the amount of debt claims of the legal entity for the management of debt claims back to the bankruptcy estate of the insolvent debtor in three working days from the receipt of the purchase price.

Ad Article 54 (amendment of Article 332)

This Article sets out the rules in relation to the procedure for the issuance of the decision on emergency measures. Emergency measures, imposed in the event when, due to increased risk at the bank, the financial stability of the bank is or might be endangered, require rapid intervention with immediate effects, whereas any postponement of these measures, after they have already been imposed even though due to the protection of bank's interest in adversary procedure, represents potential serious threat to the public interest (the financial system stability).

In connection to previous proceedings and monitoring measures, there is a considerable difference in emergency measures proceedings mainly in the findings of supervisory body (the Bank of Slovenia) which is the following: the violations at the bank at the same time represent the risk to the stability of financial system. When imposing emergency measures the most important matter is the finding that individual circumstances at the bank adversely affect the functioning of financial markets in the manner which would threaten their stability. Therefore a potential adversary procedure, in which the bank would claim mostly circumstances related to its operations, but in no way the circumstances related to the threat of financial system (such finding may be exclusively under the jurisdiction of a supervisory body that disposes of essential data for such assessment), would not lead to any different assessment of the supervisory body and to a different decision on emergency measures.

Ad Article 55 (amendment of Article 338)

The amendments to the convening in the first paragraph of Article 338 are necessary due to amendments of Article 248 of the Banking Act.

Ad Article 56 (amendment of Article 341)

The integrity of the object in question in the monitoring and judicial protection procedure requires in-depth analysis of circumstances and their legal argumentation, therefore this amendment proposes to extend the deadline to file an appeal or defence plea in the judicial protection proceedings.

Ad Article 57 (new title)

This article adds a new title to read as follows: »10.2.3. Judicial protection proceedings against the emergency measures decisions«.

Ad Article 58 (amendment of Article 350)

In emergency measures proceedings special rules are regulated in relation to judicial protection proceeding – similar as it applies to the judicial protection proceeding against the decision of the Bank of Slovenia on the start of bankruptcy proceedings – they also apply in the proceedings against the decision of the Bank of Slovenia on emergency measure that found unlawfulness of the decision does not lead to the annulment of its effects to the bank, however it only creates the liability for damages of the Bank of Slovenia.

Ad Article 59 (amendment of Article 356)

The procedure with the provision on elimination of violations is also used for the procedure with the provision on additional measures from chapter 7.5 on additional measures, chapter 7.5a on additional measures for share capital increase and chapter 7.5c on special monitoring measures.

Ad Article 60 (amendment of Article 378)

This Article additionally regulates forcible recovery of financial penalty imposed by the Bank of Slovenia with the purpose of forcing the shareholder or the bank acquiring a qualifying investment to alienate the shares or qualifying investment in accordance to the order on alienation. In relation to the purpose of financial penalty it is necessary that the financial penalty be imposed on the basis of final provision which imposes the financial penalty i.e. according to the rules applicable to tax enforcement.

Ad Article 61 (amendment of Article 392)

Amendment in the first paragraph is necessary due to the coordination with the amendment of regulation in Article 310 and subsequent Articles in relation to the deposit guarantee. The second paragraph defines the increase of the maximum penalty amount which may be imposed to the responsible person in the event of serious violations of the bank. In relation to the gravity of violations and its consequences for the bank and its system, mentioned violations shall be deemed as serious violation in the area of finances under the sixth paragraph of Article 17 of the Minor Offences Act (ZP) on the basis of which it is enabled through another Act to prescribe a penalty for the responsible person in three times the amount of penalty which may be prescribed as a sanction for the violations on the basis of the second or third paragraph (in accordance to the second paragraph of Article 17 the penalty from 40-10,000 EUR may be prescribed for a responsible person).

Ad Article 62 (amendment of Article 396)

The proposed increase of the penalty amounts is based on the fact that the amount of penalty must correspond to the gravity of violations and the degree of responsibilities of the offender. The proposed scope of the threatened penalty reflects the high degree of responsibility of management and supervisory board members of the bank to accept the decisions as legitimate representatives of the bank in accordance to applicable regulations. In relation to the gravity of violations and its consequences, mentioned violations shall be deemed as serious violations in the area of finances under the sixth paragraph of Article 17 of the Minor Offences Act (ZP) on the basis of which it is enabled through another Act to prescribe a penalty for an individual in three times the amount of penalty which may be prescribed as a sanction for the violations on the basis of the second or third paragraph of Article 17 of the Minor Offences Act (ZP) (in accordance to the second paragraph of Article 17 the penalty from 40-5,000 EUR may be prescribed for an individual). The proposed increase enables minor offence authority to consider, when imposing sanctions accordingly, the degree of responsibility of individual management or supervisory board members and the consequences of violations of their obligations to the bank's operations.

Amongst violations it is also exclusively determined the violation of requirement that management or supervisory board members of the bank ensure the fulfilment of the provision of the Bank of Slovenia on the elimination of violations or on additional measure.

Ad Article 63 (amendment of Article 397)

The Article sets out the penalty for the offence of the legal entity in which the bank acquired the qualifying investment since the legal entity does not report to the Bank of Slovenia according to the Act, and the penalty for the responsible person of the legal entity who commits such an offence.

Ad Article 64 (transitional provision)

On the basis of this Article the suspension of all voting rights of legal entities under the proposed fourth paragraph of Article 59 of the Banking Act shall be terminated.

Ad Article 65 (transitional provision)

This Article sets out that for the bank which owns the qualifying investment when this Act enters into force, from the day of enforcement it shall be deemed that the bank has the permission of the Bank of Slovenia for the acquisition of the qualifying investment under Article 88a of this Act.

Ad Article 66 (transitional provision)

As the contents of the proposed first, second and third paragraph of Article 59a, 128a and 262i of this Act should be systematically arranged in the Takeovers Act, the mentioned Articles shall be used as special arrangement for the banks solely when these contents are systematically arranged in the Takeovers Act.

Ad Article 67, 68, 69 and 70 (transitional provisions – amendments to the Financial Instruments Market Act)

The Financial Instruments Market Act (hereinafter: ZTFI) is nomotechnically written in the manner that it largely relies on the Banking Act and subsequently the solutions of the amendments in the Banking Act apply mutatis mutandis also to the Financial Instruments Market Act. The proposal temporarily regulates mutatis mutandis application of the contents until the amendment of the Financial Instruments Market Act.

Ad Article 71 (final provision)

This Article defines the start of the implementation of this Act.