

Ordinance No. 34

on Collecting Information and Conducting Inspections Regarding Assignee's in Bankruptcy Activity

(Issued by the Bulgarian National Bank on 23 October 2003;
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Chapter One

General Provisions

Subject

Article 1. This Ordinance shall establish the terms and procedure under which the Deposit Insurance Fund (the Fund) controls the activity of an assignee in a bank declared in bankruptcy through conducting inspections and collecting information pursuant to Article 40 of the Law on Bank Bankruptcy.

Liable Persons

Article 2. (1) The assignee in bankruptcy, employees and other persons working in a bank in bankruptcy shall cooperate, within their powers and competencies, with the Fund in the performance of its powers under Article 40 of the Law on Bank Bankruptcy while conducting inspections and collecting information regarding assignee's in bankruptcy activity.

(2) In case of objective failure to perform an obligation originating from this Ordinance, the liable person shall notify the Fund about the circumstances determining this failure by supporting them with evidence and presenting this evidence within two business days after its occurrence. Otherwise, it shall be deemed that no objective failure to perform the obligation is available.

Forms of Inspections and Collection of Information

Article 3. (1) Inspections conducted by the Fund over assignee's in bankruptcy activity shall include the following forms:

1. an inspection by documents;
2. an on-site inspection;
3. a counter-inspection in other bank and nonbank enterprises on matters related to an on-site inspection.

(2) The Fund may require under the procedure of this Ordinance:

1. accounting or other documents from the assignee or from the persons working for the bank in bankruptcy;
2. written explanations from the assignee or from the persons working for the bank in bankruptcy;
3. a written report or statement for a certain period or on a certain matter from the assignee or from the persons working for the bank in bankruptcy.

(3) Upon submission of a grounded request to the Fund for conducting an inspection by the central bank or by a creditor of a bank in bankruptcy, the chairman of the Fund Management Board (the chairman) shall rule on the request within a seven-day period after its submission. In case the request for an inspection submitted by a creditor of a bank in bankruptcy is improper or not supported by evidence, the chairman may require from the person who has submitted the request to make it more precise and/or to enclose evidence thereto. In this case the term of ruling on the request shall start on the date of making it more precise or supporting it with evidence.

(4) In the course of conducting a certain form of an inspection, it is possible to proceed to another form of inspection or to collection of information based on an order of the chairman.

Chapter Two

Procedure of Collecting Information

Article 4. (1) The actions under Article 3, para. 2 shall be carried out based upon an order of the chairman.

(2) The assignee in bankruptcy or the person the information is required from shall be notified by delivering a copy of the chairman's order to him.

(3) The chairman's order shall be entered in the register under Article 43 of the Law on Bank Bankruptcy.

(4) The person to whom control on execution of the order is assigned shall prepare a report analyzing execution of the order under para. 1, as well as the need of additional information and the start of conducting an inspection. The report shall be transmitted to the chairman for making a decision.

(5) The assignee in bankruptcy whose activities are inspected shall have the possibility to review the contents of the report under para. 4.

(6) Where the order under para. 1 is issued in connection with a request of the central bank or a creditor of the bank in bankruptcy, the Fund shall notify the person who has submitted the request within seven business days about the circumstances ascertained by collected information in compliance with restrictions on disclosure of information constituting bank secrecy or of other information protected by law.

**Providing Documents and Information
Regarding Assignee’s Activity**

Article 5. (1) At the request of the Fund the assignee in bankruptcy shall provide all necessary accounting and other documents, as well as information on his activity.

(2) Delivery of the chairman’s order shall be deemed an addressed request.

(3) The required documents and those necessary for clarifying circumstances related to required information shall be submitted as copies verified by the assignee in bankruptcy within the term as specified in the order.

(4) Provided there exist incompleteness and inadequacies in required documents or information on assignee’s activity, as well as in circumstances specified in these documents, additional information shall be collected or an inspection shall be conducted.

Providing Written or Oral Explanations

Article 6. (1) At the request of the Fund, the assignee in bankruptcy shall provide written or oral explanations regarding the performance of certain of his actions or the lack of performance of necessary actions in the bankruptcy proceedings.

(2) Explanations required under para. 1 shall give an answer to all posed questions and shall be supported by all documents related to stated circumstances therein.

(3) The assignee in bankruptcy shall provide the Fund with required explanations within the term specified in the chairman’s order.

(4) Provided submitted explanations and/or enclosed documents are incomplete, inadequate or unjustified, additional information shall be collected or an inspection shall be conducted.

**Submission of Written Reports for a Certain Period
or on a Certain Matter**

Article 7. (1) At the request of the Fund the assignee in bankruptcy shall submit a written report or statement for a certain period or on a certain matter.

(2) The written report or the information shall be submitted to the Fund within the term specified in the order of the chairman together with all documents certifying stated circumstances. Article 5, para. 3 shall apply to the enclosed documents.

(3) Provided submitted reports or information and/or enclosed documents are incomplete and inadequate, additional information shall be collected or an inspection shall be conducted.

Chapter Three

General Procedure of Conducting Inspections by the Fund

Article 8. (1) The Fund shall conduct inspections based upon an order of the chairman.

(2) The assignee in bankruptcy shall be notified by delivering a copy of the chairman's order to him.

(3) The order of the chairman shall be entered in the register under Article 43 of the Law on Bank Bankruptcy.

(4) Officers of the Fund authorized to conduct the inspection shall notify the chairman in writing prior to commencement of the inspection where in connection with inspection tasks there exist circumstances and relations of these officers with the inspected person which may create reasonable doubts about their impartiality.

(5) Each inspection of the Fund shall be completed with a report prepared by the officers authorized to conduct the inspection.

(6) The report shall be delivered to the inspected person who within seven business days may raise a grounded objection supported by written documents against findings established by the report. Persons conducted the inspection shall express their written statement of opinion on the objection within three business days.

(7) The report together with the objections, documents enclosed and statements expressed shall be presented to the chairman for undertaking actions against the assignee in bankruptcy provided such actions are to be taken.

(8) Provided the inspection has been conducted in connection with a request of the central bank or of a creditor of the bank in bankruptcy, the Fund shall notify the person who has submitted the request within seven business days about main circumstances established by the inspection and about measures to be undertaken in compliance with the restrictions on disclosure of information constituting bank secrecy or other information protected by law.

(9) At the request of the central bank the Fund shall submit to it a copy of the report within three business days after receipt of this request.

Conducting Inspections by Documents

Article 9. (1) An inspection by documents shall be carried out based upon explanations, statements, reports and other documents submitted to the Fund under the procedure of Article 32 and Article 40, para. 1 of the Law on Bank Bankruptcy and under this Ordinance.

(2) An inspection by documents shall be examination, comparison and analysis of the information included in the documents under the prior paragraph.

Conducting On-site Inspections by Authorized Officers of the Fund or by Other Persons

Article 10. (1) On-site inspections in a bank in bankruptcy may involve:

1. regular inspections – directed at exercising a periodical control over the assignee’s activity for a certain period of time, or

2. thematic inspections – directed at exercising control over a problem evolved in assignee’s activity in the respective bank in bankruptcy.

(2) The assignee in bankruptcy whose activity is subject to the inspection shall provide the persons authorized to perform the inspection with proper bank premises, unimpeded access to all premises of the bank in bankruptcy, all required documents, statements and information related to the subject of this inspection, and perform other actions provided for in Article 40, para. 4 of the Law on Bank Bankruptcy.

(3) Documents, statements and information necessary for an inspection shall be required in writing from the head of the team performing the inspection who shall specify the place and the term of submission thereof.

(4) Persons performing the on-site inspection may inspect, in their discretion, all circumstances and documents related to the subject of the inspection.

(5) Should the assignee or other person working for the bank in which an on-site inspection is conducted refuse to provide required documents, statements or information within the specified time limits, the head of the team shall prepare a statement recording all documents not submitted and the reasons or objections on their nonsubmission.

(6) The procedure under para. 5 shall apply also in case of lack of unimpeded access to the premises of the bank in bankruptcy.

(7) Where in the process of the on-site inspection assistance of outside experts or a counter-inspection become necessary, the head of the team shall address a grounded request to the chairman thereof.

Conducting Counter-inspections in Other Bank and Nonbank Enterprises on Matters Related to an On-site Inspection in a Bank in Bankruptcy

Article 11.(1) A counter-inspection in another bank or nonbank enterprise shall be conducted provided in connection with performance of the tasks of the on-site inspection in a bank in bankruptcy collecting additional information which may not be found in the bank in bankruptcy becomes necessary, as well as where veracity of some documents or information received in the process of the on-site inspection shall be examined, in case the tasks of the primary inspection may not be fulfilled without this counter-inspection.

(2) On-site counter-inspections in banks may be conducted jointly with representatives of the central bank by issuing a joint order of the Deputy Governor of the BNB heading the Banking Supervision Department and the chairman.

(3) Where a bank or an entity subject to a counter-inspection does not fulfil requirements provided for in this Ordinance, the chairman may require assistance from the central bank or from the institution exercising control over the entity.

Nonfeasance

Article 12. In case of failed or improper performance of obligations under this Ordinance measures under Article 41, para. 2 of the Law on Bank Bankruptcy may be undertaken or sanctions under Chapter Ten of the Law on Bank Bankruptcy may be imposed on the persons appointed to act as assignees in bankruptcy.

Transitional and Final Provisions

§ 1. This Ordinance is issued pursuant to § 3 of the Law on Bank Bankruptcy in connection with Article 40 of the Law on Bank Bankruptcy.

§ 2. This Ordinance shall also apply to bankruptcy proceedings in banks incumbent upon the entry of the Law on Bank Bankruptcy into force.

§ 3. The Management Board of the Fund shall give methodological instructions to the assignees in bankruptcy in view of enactment of this Ordinance.

§ 4. This Ordinance is adopted by Resolution No. 86 of 23 October 2003 of the Governing Council of the BNB.