

03_Development of the Legal Action Related to the Revocation of the License of the Corporate Commercial Bank_KY[english]

On 6 November 2014, at its session recorded in Minutes No. 27, the Governing Board of the Bulgarian National Bank adopted its Decision No. 138 on the revocation of the banking license of the Corporate Commercial Bank AD (CCB). The decision to revoke the license of the bank was taken after its placement under conservatorship on 20 June 2014. Conservators were appointed, the execution on all the liabilities of the bank was suspended, its activities were restricted, and the bank was prohibited to perform any transactions set out in its banking license. The Bulgarian National Bank (BNB) also removed the members of the CCB Managing and Supervisory Boards from office and disenfranchised its shareholders. Having reviewed the assets of the bank placed under conservatorship, having received the auditors' reports and having reviewed the financial and supervisory statements of the CCB as of 30 September 2014, the BNB established a negative value of the bank's equity and concluded that the bank did not meet the capital requirements. Therefore the BNB Governing Board made the said decision to revoke the CCB banking license.

The adoption of Decision No.138 of 6 November 2014 by the BNB Governing Board affected the financial interests of many persons and led to many cases brought to court. Some of the proceedings are close to finalization. We expect the parties concerned to seek other remedy as well.

The legal action has developed so far as follows:

After the adoption of Decision No. 138, the BNB filed a claim to open insolvency proceedings against the Corporate Commercial Bank AD with the competent Sofia City Court pursuant to Article 9(1) of the Banks Insolvency Act.

A number of complaints were filed against Decision No. 138 of 6 November 2014 by the BNB Governing Board with the Supreme Administrative Court. The complainants belonged to different categories of persons affected by the decision: depositors, shareholders, bond holders and the CCB Executive Directors removed from office. The court ruled promptly. It issued rulings on the cases brought by depositors and the removed Executive Directors, dropping their cases on grounds of inadmissibility of the claims due to the lack of legal

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interest. The shareholders' claims were joined in a single court case, in which a public court session took place in December 2014. The following court session was scheduled to take place in February 2015 but before the date of that session, the Supreme Administrative Court held that shareholders, too, had no legal interest in the appeal against Decision No. 138 of 6 November 2014 by the BNB Governing Board and therefore dismissed the case.

That ruling of the Supreme Administrative Court is of particular importance because if the five-member panel of judges of the Supreme Administrative Court corroborates it, the CCB shareholders will have additional grounds to seize the European Court of Human Rights (ECHR) in Strasbourg.

The ECHR has already ruled in a number of its judgments that shares and stocks possess economic value and therefore can be regarded as "possessions". The Court also holds that the Convention for the Protection of Human Rights and Fundamental Freedoms is applicable to insolvency proceedings, including the particular cases of conservatorship. Should the five-member panel of judges of the Supreme Administrative Court issue a ruling to leave in force the appealed ruling on the dismissal of the cases brought by the shareholders, that would be a proof of several things: the shareholders' right to peaceful use of their possessions has been violated; their right to fair trial, including the access to court, has been violated; and they have no effective domestic remedy at their disposal against the revocation of the bank's license.

There are some justifications of the dissenting opinion with which the ruling on the dismissal of the case was signed. The dissenting opinion states that the claimants have the right to challenge Decision No. 138 of 6 November 2014 by the BNB Governing Board. It further reads that the revocation of the license of a bank affects the civil rights of the bank within the meaning of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. The dissenting opinion goes on to say that the ECHR recognizes the opportunity for shareholders rather than the shareholding company to seek defence of the interests of the shareholding company in exceptional circumstances which make it clear that the company is not in a position to defend itself through its managing bodies or where facts and circumstances exist to prove beyond any reasonable doubt the existence of conflict of interest between the person appointed to manage the bank and the bank itself.

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Obviously, this is a case of conflict of interest between the conservators appointed by the BNB upon the removal from office of the members of the CCB Managing and Supervisory Boards. The conservators appointed by the BNB Governing Board would hardly ever appeal against the decision of the BNB Governing Board to revoke the license of the Corporate Commercial Bank AD.

At present, the litigation is still pending. Private complaints have been lodged against the rulings to dismiss individual cases and they are administered. The five-member panel of judges of the Supreme Administrative Court is expected to rule. In some cases brought by depositors, a five-member panel of judges of the Supreme Administrative Court has already corroborated the ruling issued by the three-member panel of judges on the dismissal of cases due to the lack of legal interest. The outcome of a case brought by a bond holder was the same. Similar rulings are expected on the other private complaints. After the five-member panels of judges rule, the domestic remedy will have been exhausted and will have proven ineffective. The Supreme Administrative Court is expected to decide whether to ask for a preliminary ruling or not.

Besides, for the purposes of staying the proceedings based on the shareholders' appeals against Decision No. 138, one of the shareholders filed also a complaint against Decision No. 77 of 25 June 2014 issued by the BNB Governing Board in that part which concerned the appointment of the conservators of the Commercial Corporate Bank AD. On 8 January 2015, the Supreme Administrative Court held that the complaint was inadmissible due to the lack of legal interest. That ruling was appealed and subsequently corroborated by a five-member panel of judges of the Supreme Administrative Court on 13 February 2015. The ruling of the five-member panel is final. The objective of the appeal against Decision No. 77 of 25 June 2014 issued by the BNB Governing Board was to stay the proceedings brought by shareholders against Decision No. 138 of 6 November 2014 by the BNB Governing Board.

Upon the filing of the appeals against Decision No. 138 of 6 November 2014 by the BNB Governing Board, the case at the Sofia City Court against the opening of insolvency proceedings against the Corporate Commercial Bank AD was stayed on 24 November 2014.

These proceedings will be resumed after the finalization of the proceedings with the Supreme

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Administrative Court for the appeal against the decision to revoke the license. The shareholders who had more than 5 percent of the bank's capital as of the date of the banking license revocation may become parties to the insolvency proceedings with the Sofia City Court. However, even they will not be in a position to challenge the judgment in this case.

The judgment of the Sofia City Court on the opening of insolvency proceedings will be subject to appellate and cassation proceedings under the general terms and conditions. The statutory time limit for appeal is seven days. The right to appeal is granted to the conservators of the CCB and the Bulgarian National Bank, whereas the public prosecutor has the right to protest. The appeal against the judgment will not suspend its enforcement.

We expect the further developments. We also expect the numerous affected parties to try and defend their rights in other proceedings. This refers largely to the shareholders of the Corporate Commercial Bank AD.