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Bank Restructuring Law

Summary and Analysis of Law No. 23 as amended

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Bank Restructuring Law – as amended

Summary and Analysis

Executive Summary

Following years of severe financial collapse since October 2019, Parliament enacted amendments to the Bank Restructuring Law (BRL). This legislative framework establishes a comprehensive mechanism for resolving distressed commercial banks, evaluating asset quality, applying statutory resolution tools, and executing orderly liquidations where rehabilitation is non-viable.

The primary objective of the law is to modernize the legal architecture governing banking crises in alignment with international standards. It aims to protect public funds by preventing state bailouts, maintain the continuity of critical banking functions, safeguard qualified customer deposits, and ensure orderly market exit for insolvent institutions.

Critical Suspension Clause (Article 29)
Implementation of this law is explicitly suspended until the formal enactment and publication of the Financial Restoration and Deposit Recovery Law (Gap Law). This sister legislation is required to establish the macro-financial framework, determine state liabilities, and address the system-wide financial gap.

Governance Framework and Regulatory Bodies

The law establishes a restructured governance model within the Central Bank (BDL) to eliminate conflicts of interest and ensure independent resolution decisions.

Higher Banking Council Structure (Article 4)

The Higher Banking Council is split into two specialized chambers with distinct mandates:

- **First** Chamber (Disciplinary and Supervisory): Composed of the Governor of BDL (Chair), the First Vice-Governor, the Director General of Finance, a senior judge with at least ten years of commercial/financial experience, the Chairman of the Banking Control Commission (BCC), and the Chairman of the National Deposit Guarantee Institution (NDGI). This chamber handles disciplinary sanctions and traditional supervisory oversight.

- **Second** Chamber (Resolution and Liquidation): Serves as the ultimate decision-making body for subjecting banks to resolution or liquidation. It consists of the BDL Governor (Chair), two Vice-Governors, an independent financial expert in bank mergers and restructuring (10+ years experience, appointed by Cabinet), an independent economic expert in restructuring (appointed by Cabinet), a senior judge, and the Director General of Finance. The BCC Chairman attends without voting rights.

Conflict of Interest and Ethics Standards (Article 5)

Council members must file asset declarations under the Illegal Enrichment Law. Strict independence criteria apply, barring members from voting if they held board positions, executive office, or advisory roles in the target bank within the preceding five years, or if they or their family members hold loans or deposits exceeding $100,000 in the bank or its affiliated entities.

Resolution and Liquidation Mechanisms

The law establishes dual pathways for troubled financial institutions upon evaluation by BCC and independent international evaluators.

> **Triggers for Resolution or Liquidation (Article 10)**
> An institution is subject to action if BCC deems it failing or likely to fail based on inability to meet minimum capital requirements, failure to comply with liquidity metrics, inability to meet liabilities as they fall due, sustained nonprofitability, or material license breaches.

Key Resolution Tools (Article 11)

- **Bail-In:** Writing down equity, capital instruments, and non-exempt liabilities, or converting liabilities into capital instruments in accordance with the legal hierarchy of claims.
- **Recapitalization:** Issuing new equity shares to new investors, with potential participation of existing non-controlling minority shareholders.
- **Asset and Liability Transfer:** Transferring specific assets, rights, or liabilities to another operating financial institution or bridge bank.
- **Mergers:** Facilitating structural mergers with solvent financial institutions.

Orderly Liquidation (Article 19 & 20)

If a bank cannot be rehabilitated, the Higher Banking Council issues a decision to strike it from the bank list and initiate liquidation. Liquidation is managed by a appointed Liquidation Committee of six members, including representatives for depositors, creditors, shareholders, legal and banking experts, and the NDGI Chairman.

Hierarchy of Claims and Loss Absorption

A strict statutory hierarchy has been established for governing loss absorption during resolution or liquidation, superseding any prior contractual terms.

Category	Rank	Description of Claims / Capital Instruments
Capital	Rank 1	Common equity shares, share premiums, and cash contributions in common equity
Capital	Rank 2	Additional Tier 1 capital instruments, cash contributions in AT1, and AT1 preference shares
Capital	Rank 3	Tier 2 capital instruments, Tier 2 preference shares, and Tier 2 subordinated debt
Liabilities	Rank 4	Subordinated debt not qualifying as regulatory capital
Liabilities	Rank 5	Deposits of major shareholders (5%+ control), board members, executive management, deputy general managers, and their spouses or children
Liabilities	Rank 6	Unsecured liabilities including bank-issued bonds, interbank liabilities, related/unrelated financial sector institution deposits, and fiduciary deposits
Liabilities	Rank 7	Secured liabilities and uninsured/unprotected customer deposits
Liabilities	Rank 8	Insured/protected customer deposits under the National Deposit Guarantee Institution
Exempt		Taxes due, New Funds (fresh foreign currency deposited/transferred after Oct 17, 2019), and lira deposits.

Accountability, Clawback, and Asset Recovery

The law establishes robust statutory mechanisms to pursue former executives and claw back illegitimate transactions executed prior to resolution or liquidation.

Accountability Measures (Article 13 & 19)

Upon initiation of resolution or liquidation, if serious grounds exist to suspect civil or criminal offenses by major shareholders, board members, senior management, authorized signatories, or auditors who served in the preceding ten years, authorities must:

- Impose temporary six-month travel bans and freeze all personal movable and immovable assets and bank accounts
- Apply to domestic or international courts for precautionary attachments on global assets
- Require individuals to submit complete asset disclosures within ten business days, subject to three months imprisonment for non-compliance.

Clawback Powers (Article 21)

Liquidators and Temporary Administrators are empowered to annul and recover funds from transactions that provided unjustified benefits at the expense of creditors, including:

- Transactions with related or close parties undertaken within 36 months prior to liquidation
- Unjustified transactions with third parties undertaken within 18 months prior to liquidation
- Grants, donations, creation of trusts, early debt repayments, unearned dividends, or excessive board remuneration
- Clawback of funds or bonuses paid to board members or executives over the preceding ten years in violation of governance rules
- Recovery of discriminatory outbound transfers executed after October 17, 2019.

Judicial Review and Safeguards

Decisions of the Higher Banking Council can be appealed before a Special Court within ten days of notification or publication (Article 25). Appeals do not automatically stay execution unless ordered by the court due to obvious legal errors and severe irreparable harm.

If a decision is annulled, the third-party actions taken in good faith remain valid, and injured parties are compensated financially by the bank or through priority liability placement.

Article 27 grants broad liability protection to BDL, BCC, the Higher Banking Council, Temporary Administrators, and Liquidators, shielding them from personal liability for actions taken in good faith while exercising their official duties.