

Pursuant to Articles 230 and 249 of the Banking Law of Republika Srpska (“Official Gazette of Republika Srpska”, issue No.: 04/17), Article 5, Paragraph 1, Item b, Article 20, Paragraph 2, Item b, and Article 37 of the Law on Banking Agency of Republika Srpska (“Official Gazette of Republika Srpska”, issue No.: 59/13 and 04/17), and Article 6, Paragraph 1, Item b and Article 19, Paragraph 1, Item b of the Statute of the Banking Agency of Republika Srpska (“Official Gazette of Republika Srpska”, issue No.: 63/17), the Management Board of the Banking Agency of Republika Srpska, at its 47<sup>th</sup> session held on 26 February 2018, adopted the following:

## **DECISION**

### **ON PROCEDURE AND MANNER OF PERFORMING WRITE OFF OR CONVERSION OF CAPITAL INSTRUMENTS AND LIABILITIES OF BANKS**

#### **Subject of Decision**

##### **Article 1**

(1) This Decision shall prescribe the procedure for write off and conversion of capital of a bank, the procedure and manner of performance of write off and conversion of capital and liabilities of the bank under resolution procedure, as well as the conditions for using the funds ensured for resolution of banks.

(2) The provisions of this Decision shall be applied to banks seated in Republika Srpska, to which the Banking Agency of Republika Srpska (hereinafter: Agency) has issued an operating license, as well as to the banking group subject of the Agency’s supervision on consolidated basis.

#### **Conditions for write off or conversion of capital instruments**

##### **Article 2**

(1) Write off or conversion of appropriate instruments of capital into shares or other equity instruments, the bank may perform:

- 1) independently of the resolution measure or
- 2) together with the implementation of the resolution measure, if the conditions for the resolution of the bank are met.

(2) The Agency may perform the write off or conversion of appropriate instruments of capital into shares or other equity instruments before the initiation of resolution procedure, and after

the initiation of such procedure, the write off or conversion of capital shall perform before the application of appropriate resolution instrument.

(3) The Agency may without delay perform the write off or conversion of capital instruments of the bank, if one of the following conditions are met, as a minimum:

- 1) the conditions for initiation of resolution procedure, prescribed by the Banking Law of Republika Srpska (hereinafter: Law), are met before any resolution measures have been undertaken,
- 2) the Agency identifies as probable that the bank would not be in capacity to continue with its business operations in accordance with the Law, unless the write off or conversion is performed, and it is not probable that any other measure undertaken by the bank or private sector entity, nor measure undertaken in the supervision procedure under the Law, excluding the write off or conversion, would eliminate, within a reasonable time period, obstacles for the continuation of bank's business activities, taking into account all circumstances of an individual case and
- 3) the bank requested for extraordinary public financial support, except if the bank liquidation is in question, and the financial support is requested for the purpose of solving the issue of undercapitalization, determined by stress testing and the bank's asset quality review.

(4) The write off or conversion is being performed without a consent of shareholders, deponents and other bank creditors or any other third party.

(5) The Agency shall be obliged, before it performs the write off or conversion of capital instruments, to ensure independent assessment of the value of bank's assets and liabilities, in accordance with Article 232 of the Law and the Decision on conditions and manner of performance of independent assessment of value of bank's assets and liabilities before and in the course of resolution procedure, and based on which the calculation of the write off amount is being performed, i.e. the level of conversion of capital instruments necessary for the coverage of losses and/or recapitalization of the bank.

### **Treatment of shareholders**

#### **Article 3**

(1) When performing the write off or conversion of capital elements or application of resolution instruments by means of bank's own funds (bail-in), the Agency shall undertake the following measures in relation to shareholders:

- 1) cancel shares or transfer them to the creditors that bear losses by application of this instrument and
- 2) significantly reduce the nominal value of shares and other appropriate bank shareholder rights, as a consequence of conversion of capital elements or eligible liabilities of the bank under resolution into its shares, under the conditions, in accordance with the independent assessment of value referred to in Article 232 of the Law and the Decision on conditions and manner of performance of independent assessment of value of bank's assets and liabilities before and in the course of resolution procedure, that the asset of bank under resolution is higher than its liabilities.

(2) Conversion referred to in Paragraph 1, Item 2 of this Article shall be performed under the conversion rate by means of which the nominal value of existing shares and other equity instruments shall be significantly reduced.

(3) Measures referred to in Paragraph 1 of this Article shall also relate to shareholders and holders of other equity instruments to whom appropriate shares or other equity instruments have been issued, i.e. transferred based on conversion of:

- 1) debt instruments into shares or other equity instruments, in accordance with contracted conditions of initial debt instruments in case of onset of the event that preceded or occurred at the same time as the decision to initiate the resolution procedure was made and
- 2) appropriate capital instruments into elements of Common Equity Tier 1 capital (hereinafter: CET1), in accordance with Article 4 of this Decision.

(4) When deciding on measure referred to in Paragraph 1 of this Article, the Agency shall take into account:

- 1) the results of independent assessment of bank's assets and liabilities, conducted in accordance with Article 232 of the Law and the Decision on conditions and manner of performance of independent assessment of value of bank's assets and liabilities before and in the course of resolution procedure,
- 2) the amount up to which the elements of CET1 are mandatory being reduced according to the assessment, and appropriate capital instruments are being written off or converted, in accordance with Article 4, Paragraph 1 of this Decision, and
- 3) the total sum of amounts of assessment of bank resolution by means of bail-in, which is assessed in accordance with Article 251 of the Law.

## **Implementation of write off or conversion of capital instruments**

### **Article 4**

(1) Write off or conversion of bank's capital instruments shall be performed according to the following sequence:

- 1) elements of CET1 shall be reduced proportionally to losses and up to a total amount of those capital elements, and the Agency shall undertake one or both measures towards the shareholders in the application of bail-in instrument, where such measures are prescribed by the Law,
- 2) elements of AT1 shall be written off or converted into CET1 instruments up to the extent necessary for achievement of resolution objectives or up to a total amount of those capital elements, depending which is lower and
- 3) elements of Tier 2 shall be written off or converted into CET1 instruments up to the extent necessary for achievement of resolution objectives or up to a total amount of those capital elements, depending which is lower.

(2) In case of write off of capital elements, the obligations under that basis towards the owner of an appropriate capital element in the written off amount of that element shall cease to exist, excluding already calculated obligations, and compensation under the basis of this write off shall not be paid to the owner.

(3) When implementing write off and conversion referred to in Paragraph 1 of this Article, the Agency shall strive to ensure an equal treatment of creditors whose receivables are in the same payment rank according to priority payment sequence in the liquidation and bankruptcy procedure of the bank. When performing write off and determining the conversion rate of Tier 2 elements, the Agency shall take care that the total value of shares and receivables, which shall remain in the possession of shareholders and creditors after the application of measure referred to in Paragraph 1 of this Article, cannot be lower than the amount which would be allocated to those shareholders, i.e. creditors in bankruptcy procedure.

(4) Write off and conversion referred to in Paragraph 1 of this Article shall be applied to all elements that meet conditions for the inclusion in calculation of the bank's Tier 2 in a full amount, independently whether the bank included them in the calculation of Tier 2 and in which amount.

(5) If by means of independent assessment of the value of bank's assets and liabilities, referred to in Article 232 of the Law and the Decision on conditions and manner of performance of independent assessment of value of bank's assets and liabilities before and in the course of resolution procedure, it has been determined that the value of net bank's asset is lower than its

liabilities, the Agency shall, by means of the Ruling according to which the write off or conversion of capital instruments referred to in Paragraph 1 of this Article is being performed, i.e. by means of the Ruling on initiation of resolution procedure, fully cancel the bank's shares or transfer them to creditors that bear the losses when applying this measure, i.e. instrument, depending on other measures that are being undertaken.

(6) If the total bank's net asset is higher than its liabilities, the Agency shall significantly reduce the nominal value of shares and other appropriate rights of bank's shareholders, i.e. shall transfer them to creditors that bear the losses when applying this measure, i.e. instrument.

(7) If the conversion of bank's capital instruments would lead to acquisition or increase of share in the bank above percentages prescribed in Article 41 of the Law, the Agency shall timely perform the assessment of fulfilment of conditions for issuance of consent for acquisition of qualifying holding, hence such assessment shall have no effect on delay of this conversion.

### **Bail-in objectives**

#### **Article 5**

(1) The Agency may apply the bail-in instrument in the following cases:

- 1) for the purpose of recapitalization of the bank under resolution procedure, to the extent necessary for its continued undisturbed business operations in accordance with the Law and for maintenance of trust in the bank on financial market and
- 2) for the purpose of conversion into capital or write off (reduction) of liabilities principal or debt instruments which are being transferred to the bridge bank in order to ensure capital for that bank or are being transferred within the instrument of sale of shares, i.e. assets, rights and liabilities or separation of assets of the bank under resolution procedure.

(2) The Agency may apply the bail-in instrument for the purpose of recapitalization of the bank under resolution procedure only if it is realistic to expect that the application of that instrument, together with other measures, including measures that are being implemented in accordance with the plan of re-organization of business operations of the bank under resolution procedure, along with the achievement of appropriate resolution objectives, would lead to the situation where the bank will be able to re-establish financial stability and long term sustainability.

## **Area of bail-in application**

### **Article 6**

(1) Liabilities of the bank under resolution procedure to which conversion or write off referred to in Article 248, Paragraph 1, Item 2 of the Law (hereinafter: eligible liabilities) can be applied shall cover all bank's liabilities, excluding liabilities:

- 1) on the basis of insured deposits, up to the amount which is insured according to the law governing the insurance of deposits of banks in Bosnia and Herzegovina,
- 2) whose fulfilment is secured by right of pledge, financial collateral or other similar right, including repo transactions, covered bonds or financial instrument liabilities which are used as a risk protection and are integral part of assets intended for coverage and which are secured in a similar way as covered bonds,
- 3) which are product of management of assets and clients' funds, including assets or clients' funds which the bank under resolution procedure is keeping for the account of investment and pension funds, if such funds are excluded from liquidation or bankruptcy estate by means of a separate law,
- 4) towards banks in Bosnia and Herzegovina and foreign banks and investment funds, with an initial maturity period shorter than seven days, excluding liabilities towards members of the same group,
- 5) with remaining maturity period shorter than seven days per payment systems and securities settlement systems, i.e. operators of those systems and participants in those systems, which occurred per participation in those systems,
- 6) towards employees based on calculated not paid out salaries, contributions for obligatory pension and health insurance or other fixed income, except for variable compensations that are not regulated by law or collective contract,
- 7) towards creditors on the basis of sale of goods or provision of services to the bank under resolution procedure, which are crucial for everyday business operations of that bank, including services of IT, utilities, lease, servicing and maintaining of office space,
- 8) towards tax authorities and authorities to which contributions are being paid, under the condition that such liabilities have priority in settlement procedure, in accordance with this and other laws, and
- 9) towards the Deposit Insurance Agency of Bosnia and Herzegovina, based on premium for deposit insurance.

(2) The initiation of resolution procedure and implementation of the bail-in instrument shall have no effect on assets which serve as collateral for covered bonds, and which remain protected, separated and for which the level is determined.

(3) The Agency may, apart from the provisions referred to in Paragraph 1, Item 2 and Paragraph 2 of this Article, apply the bail-in instrument also on the portion of liabilities which exceeds the value of assets, pledge subject, right of pledge or other collateral instrument by means of which the fulfilment of those liabilities is ensured.

### **Assessment of bail-in amount**

#### **Article 7**

(1) When applying the bail-in instrument, based on the independent assessment from Article 232 of the Law and the Decision on conditions and manner of performance of independent assessment of value of bank's assets and liabilities before and in the course of resolution procedure, the Agency shall determine the total sum of:

- 1) the amount for which eligible liabilities are unavoidably being written off in order to ensure that the value of assets of the bank under resolution procedure would be equal to the value of its liabilities and
- 2) the amount for which eligible liabilities are unavoidably being converted into capital in order to re-establish prescribed regulatory capital adequacy ratio of the bank under resolution procedure or the bridge bank.

(2) When determining the amount referred to in Paragraph 1 of this Article, the Agency shall take into account the necessity for maintaining trust in the bank under resolution procedure or the bridge bank on financial market and ensuring undisturbed continued business operations of these banks in the period not shorter than one year.

(3) If the Agency intends also to apply the instrument of asset separation, apart from the bail-in instrument, when determining the amount for which eligible liabilities are being written off, it shall take into account the assessment of necessary capital of asset management company.

### **Sequence of write off and conversion when applying bail-in instrument**

#### **Article 8**

(1) By means of application of the bail-in instrument, the Agency shall, in accordance with Article 249, Paragraphs 1 and 4 of the Law, perform write off and conversion according to the following sequence:

- 1) elements of CET1 shall be reduced in accordance with Article 3, Paragraph 1, Item 1 of this Decision, to the extent possible and necessary,
- 2) principal of AT1 instruments shall be reduced to the extent possible and necessary, and in accordance with the instrument features, if the total reduction according to Item 1 of

this Paragraph is lower than the sum of amounts referred to in Article 3, Paragraph 4, Items 2 and 3 of this Decision,

- 3) principal of Tier 2 instruments shall be reduced to the extent possible and necessary, and in accordance with the instrument features, if the total reduction according to Items 1 and 2 of this Paragraph is lower than the sum of amounts referred to in Article 3, Paragraph 4, Items 2 and 3 of this Decision,
- 4) principal of subordinated debt, which is not included in the elements of AT1 or Tier 2, shall be reduced to the extent possible and necessary, in accordance with the priority sequence of receivables settlement in bankruptcy procedure, in order to, together with the reduction of value in accordance with Items 1, 2 and 3 of this Paragraph, reach the sum of amounts referred to in Article 3, Paragraph 4, Items 2 and 3 of this Decision, if the total reduction according to Items 1, 2 and 3 of this Paragraph is lower than the sum of amounts referred to in Article 3, Paragraph 4, Items 2 and 3 of this Decision and
- 5) principal or the remaining amount of eligible liabilities shall be reduced to the extent possible and necessary, in accordance with the priority sequence of receivables settlement in bankruptcy procedure in order to, together with the reduction of value in accordance with Items 1, 2, 3 and 4 of this Paragraph, reach the sum of amounts referred to in Article 3, Paragraph 4, Items 2 and 3 of this Decision, if the total reduction according to Items 1, 2, 3 and 4 of this Paragraph is lower than the sum of amounts referred to in Article 3, Paragraph 4, Items 2 and 3 of this Decision.

(2) The Agency shall equally allocate losses among shareholders and creditors in accordance with Paragraph 1 of this Article by reducing the amount of elements of CET1 and AT1, Tier 2, subordinated and other eligible liabilities to the extent proportional to their value, unless it has fully or partially excluded certain eligible liabilities from the write off or conversion in accordance with Article 249, Paragraph 4 of the Law.

(3) When performing conversion referred to in Paragraph 1 of this Article, the Agency may apply different rates of this conversion for different categories of shareholders and creditors from that Paragraph, taking into account that the same rate is being applied to all creditors belonging to the same payment priority rank, and that the more favorable conversion rate is being applied to a higher payment priority rank.

(4) In case when creditors' receivables are being fully written off, they shall cease to have any value. When performing conversion of liabilities or other capital instruments into share capital, the value of receivables from share capital may be higher, lower or equal to the value of original, converted receivables. The values of these receivables from share capital must be an integral part of the assessment referred to in Article 257 of the Law.



(5) When it is expected that the total assessed value of share capital which creditors received after the write off and conversion would be higher than the total amount of receivables that have been written off or converted into share capital, the principle according to which none of the creditors or shareholders has not been put in less favorable condition than in case that the bankruptcy procedure over the bank was initiated on the date when decision on resolution was made may be fulfilled without the application of differential conversion rates.

## **Financial derivate**

### **Article 9**

(1) The Agency may proclaim the contract on financial derivate as past due and terminate it on the date when the decision on initiation of resolution procedure was made.

(2) By means of separate Instructions, the Agency shall prescribe standards and principles for valuation of liabilities stemming from the contracts on financial derivate.

## **Exclusion or partial exclusion of eligible liabilities**

### **Article 10**

(1) Notwithstanding Article 7 of this Decision, the Agency may fully or partially exclude certain eligible liabilities from the implementation of write off or conversion referred to in Article 248, Paragraph 1 of the Law, if one of the following conditions is met, as a minimum:

- 1) these liabilities are not possible to be written off or converted within a reasonable period, even along with necessary activities which it would undertake in order to timely and efficiently apply that instrument,
- 2) such exclusion is necessary and proportional in order to continue with performance of critical functions and key business activities of the bank under resolution procedure,
- 3) such exclusion is necessary and proportional in order to prevent the spread of financial disturbance on the market, especially in relation to deposits of natural persons, entrepreneurs and micro, small and medium legal persons, due to which the financial stability of sector would be endangered in a manner that could cause serious disturbance in real sector and
- 4) write off or conversion of these liabilities would cause such reduction of value that the losses which would bear other creditors would be higher than in the case of exclusion of those liabilities from the write off or conversion.

(2) In case when eligible liabilities or a category of eligible liabilities are excluded or partially excluded, the level of write off or conversion that is being applied to other eligible liabilities may be increased in order to take under consideration such exclusions, under the condition that the

creditors of those other eligible liabilities would not suffer higher losses from the ones they would suffer if the liquidation or bankruptcy procedure has been initiated over the bank.

## **Utilization of funds for financing resolution of banks**

### **Article 11**

(1) Funds intended for financing resolution envisaged by Article 259 of the Law the Agency may utilize only to the extent which is necessary in order to secure efficient implementation of resolution instrument, and for the following purposes:

- 1) for ensuring assets or liabilities of the bank under resolution procedure, its daughter companies, bridge bank or asset management company,
- 2) for extending loans to the bank under resolution procedure, its daughter companies, bridge bank or asset management company,
- 3) for purchase of assets of the bank under resolution procedure,
- 4) for granting contributions to the bridge bank or asset management company,
- 5) for payment of compensation to shareholders or creditors,
- 6) for granting contributions to the bank under resolution procedure instead of write off or conversion of liabilities of certain creditors, when applying write off, conversion or bail-in, and when the Agency decides to exclude certain creditors from the resolution scope,
- 7) for lending to other voluntary financing arrangements,
- 8) for undertaking of any combination of measures referred to in Items 1 -7 of this Article.

(2) Funds referred to in Paragraph 1 of this Article may be used for financing resolution only in case when the shareholders and other creditors, by means of reduction of value, conversion or in other manner, participated in the coverage of losses and increase of capital in the amount at least:

1. 4%, starting from 1 January 2017,
2. 5%, starting from 1 January 2018,
3. 6%, starting from 1 January 2019,
4. 7%, starting from 1 January 2020 and
5. 8%, starting from 1 January 2021,

out of total liabilities, including regulatory capital of the bank under resolution procedure, calculated in the moment of undertaking resolution measures, in accordance with the independent assessment referred to in Article 232 of the Law and the Decision on conditions and manner of performance of independent assessment of value of bank's assets and liabilities before and in the course of resolution procedure.

(3) Arrangement for financing resolution shall not be used directly for coverage of losses of the bank or for recapitalization of such bank. In case when utilization of arrangement for financing resolution for the purposes referred to in Paragraph 1 of this Article indirectly results in transfer of portion of bank's losses to the arrangement of financing resolution, the provisions that prescribe the utilization of arrangement for financing resolution defined in Articles 248 – 258 of the Law shall be applied.

### **Final provisions**

#### **Article 12**

This Decision shall come into effect on the eight day of its issuance in the "Official Gazette of Republika Srpska".

Number: UO-369/18

Date: 26 February, 2018

PRESIDENT OF THE  
MANAGEMENT BOARD  
Mira Bjelac