

Pursuant to Article 250, Paragraph 5 of the Banking Law of Republika Srpska (“Official Gazette of Republika Srpska” No.: 04/17, 19/18 and 54/19), Article 5, Paragraph 1, Item b), Article 20, Paragraph 2, Item b) and Article 37 of the Law on the Banking Agency of Republika Srpska (“Official Gazette of Republika Srpska” No.: 59/13 and 4/17), 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” No.: 63/17), the Management Board of the Banking Agency of Republika Srpska, at the 50<sup>th</sup> session held on 20 February 2023 issued

## **DECISION**

### **ON MINIMUM REQUIREMENTS FOR OWN FUNDS AND ELIGIBLE LIABILITIES**

#### **Subject**

#### **Article 1**

(1) This Decision in more detail elaborates the manner of determining and criteria for determining minimum requirements for own funds and eligible liabilities (hereinafter: MREL requirement), and the deadline within which the banks are obliged to meet them.

(2) This Decision in more detail stipulates conditions under which eligible liabilities referred to in Article 249, Paragraph 1 of the Banking Law of Republika Srpska (hereinafter: the Law) are included in calculating MREL requirement and used for meeting the MREL requirement.

(3) Provisions of this Decision shall be obliged to banks to which the Banking Agency of Republika Srpska (hereinafter: the Agency) has issued an operating license in accordance with the provisions of the Law and a banking group which are subject of the Agency’s supervision on a consolidated basis.

#### **MREL requirement**

#### **Article 2**

(1) MREL requirement is the minimum amount of own funds and eligible liabilities ensuring the bank’s ability to cover a certain loss amount (hereinafter: loss coverage amount) and if necessary, ensure an amount required that, after the loss coverage, the bank can re-establish regulatory capital adequacy ratio at the level which would enable its further unhindered business operations and maintaining sufficient confidence in the bank on the financial market, i.e. to ensure continuity of critical functions, all in accordance with the preferred resolution strategy (hereinafter: recapitalization amount).

(2) The Agency shall determine and calculate MREL requirement in accordance with Article 250 of the Law and provisions of this Decision, at least in the amount of the sum of loss coverage amount and recapitalization amount, determined in accordance with Art. 4, 5 and 6 of this Decision, and which the bank shall meet by the sum of eligible liabilities and own funds.

(3) The Agency shall disclose determined MREL requirement as a percentage wise disclosed ratio of the sum of eligible liabilities and own funds and the sum of own funds and the bank’s total liabilities.

(4) The amount of required MREL requirement for the bank, or a banking group, shall be determined by the Agency's ruling.

(5) The amount of required MREL requirement shall be monitored on a regular basis and updated as required, at least within the scope of regular resolution planning.

(6) The amount of required MREL requirement is in a direct connection with the selected resolution strategy and instrument, i.e. resolution instruments planned to be applied when implementing resolution over a particular bank, that is:

1) For banks for which the resolution strategy of continuity of business operations of the whole bank by applying bail-in resolution instrument has been selected, the amount of MREL requirement, apart from an adequate loss coverage amount in the resolution, must also constantly maintain an appropriate recapitalization amount in the amount sufficient for maintaining capital requirements stipulated by the Law, and preserving sufficient confidence in the bank on the financial market after the resolution.

2) For banks for which the resolution strategy of maintaining critical functions by transferring them to another bank or a bridge bank has been selected, the recapitalization amount must be sufficient only for coverage of increased capital requirements of the receiver of a portion of assets and liabilities of the bank under resolution, and which arise from the acquired portion of assets.

3) For banks for which in the course of assessment of resolvability it is determined that the liquidation or bankruptcy of the bank is justified and feasible, the MREL requirement shall only be the loss coverage amount, while the recapitalization amount is equal to zero.

### **Criteria for determining MREL requirement**

#### **Article 3**

(1) For the purpose of application of criteria referred to in Article 250, Paragraph 3, Item 1 of the Law, the Agency shall determine the probability of achieving resolution objectives by applying available resolution instruments, especial bail-in resolution instrument.

(2) In case of applying bail-in resolution instrument over the bank, and for the purpose of application of criteria referred to in Article 250, Paragraph 3, Item 2 of the Law, the Agency shall determine whether the bank disposes of sufficient amount of eligible liabilities and own funds in order to be able to perform loss coverage, and if needed, ensure sufficient amount for re-establishing regulatory capital ratio at the level which would enable unhindered business operations of the bank and maintaining sufficient confidence in the bank on the financial market.

(3) When applying criteria referred to in Article 250, Paragraph 3, Item 3 of the Law, the Agency shall assess which eligible liabilities, pursuant to Article 249, Paragraph 4 of the Law, could be exempt from the application of bail-in resolution instrument or transferred by applying another resolution instrument in accordance with the resolution plan, and to ensure that the bank has sufficient other eligible liabilities in order to cover losses and re-establish bank capital adequacy indicator at the level which enables further unhindered business operations.

(4) After it identifies liabilities referred to in Paragraph 3 of this Article, the Agency shall verify whether MREL requirement is determined in the amount that ensures relevant loss coverage and bank recapitalization, without applying write-off, i.e. conversion of those liabilities, in a manner that does not violate the principles referred to in Article 223 of the Law.

(5) When applying criteria referred to in Article 250, Paragraph 3, Item 4 of the Law, the Agency shall assess whether capital requirements stipulated for the bank, other measures in the inspection procedure and measures to resolve or eliminate obstacles for resolution, appropriately reflect the size, business model, funding model and risk profile of the bank, and whether there is need to, by determining higher or lower MREL requirement amount, correct possible disproportion.

(6) When applying criteria referred to in Article 250, Paragraph 3, Item 5 of the Law, the Agency shall make sure that MREL requirement is determined depending on the assessment of possible amount of funds of the Deposit Insurance Fund, governed by the Deposit Insurance Agency of Bosnia and Herzegovina, and which could be facilitated for resolution funding in accordance with the provisions of the law governing deposit insurance in banks of Bosnia and Herzegovina.

(7) When applying criteria referred to in Article 250, Paragraph 3, Item 6 of the Law, the Agency shall determine whether the termination of the bank's business operations would pose a risk for financial sector stability, including spreading of financial difficulties to other banks also, given their interconnectedness or connectedness with other segments of the financial sector.

(8) If it deems as necessary, the Agency may, when developing resolution plan, determine a lower or higher capital adequacy ratio from the ratio determined in accordance with Article 37, Paragraph 5 of the Law and Article 5, Paragraph 2 of this Decision.

(9) When determining MREL requirement referred to in Article 2, Paragraph 1 of this Decision, the Agency may determine for the same to be partially met also by applying instruments for which the bank has contracted that, in the case of applying bail-in resolution instrument, are to be written-off or converted to the extent required before the write-off or conversion of other eligible liabilities, as well as, that in the case of liquidation or bankruptcy, liabilities per those instruments are paid after the settlement of other eligible liabilities – if it assesses that by applying write-off or conversion of these instruments, the resolution objectives would be more efficiently achieved, i.e. resolution costs reduced.

(10) When determining MREL requirement, subordinated debt and other liabilities already included in regulatory capital are excluded from qualified eligible liabilities and total liabilities, and liabilities from derivatives are included in total liabilities referred to in Article 2, Paragraph 3 of this Decision, given that contracted right of the counterparty to netting is fully recognized, these liabilities from derivatives are taken in net amount.

### **Loss coverage amount**

#### **Article 4**

(1) When determining loss coverage amount, the Agency starts from the current capital requirements, which are being applied to the bank in accordance with Article 37, Paragraph 4 and 5 of the Law.

(2) For determining loss coverage amount, the total amount of the bank's risk exposure on an individual basis is being applied, as defined in Article 34, Paragraph 3 of the Decision on calculating capital in banks.

(3) Loss coverage amount is the multiplication of the total amount of risk exposure and capital requirements of the bank (the sum of the amount of required capital to meet minimum ratios of regulatory capital and additional capital requirement).

$$\text{Loss coverage amount} = \text{total amount of risk exposure} \times (\text{minimum capital req.} + \text{additional capital req.})$$

(4) If the loss coverage amount, calculated as defined in Paragraph 3 of this Article, is less than the amount required to meet the minimum leverage requirement, then the amount of minimum leverage requirement determined in accordance with Article 37 of the Decision on calculating capital in banks is taken into account as the loss coverage amount.

### **Recapitalization amount**

#### **Article 5**

(1) When determining recapitalization amount, the Agency starts from the current total capital requirements, which are being applied to the bank in accordance with Article 37 of the Law, and Articles 34 and 37 of the Decision on calculating capital in banks.

(2) Recapitalization amount also includes the amount required to maintain confidence in the bank on the financial market after the resolution, whose standard amount is equal to the requirement for the combined buffer, in accordance with Articles 39 and 40 of the Decision on calculating capital in banks.

(3) Determining the total amount of risk exposure as a variable for determining the recapitalization amount depends on the preferred resolution strategy and resolution instruments planned to be applied in resolution of a particular bank, that is:

1) In applying bail-in instrument for determining the recapitalization amount, the total risk exposure amount shall be applied, defined in Article 34, Paragraph 3 of the Decision on calculating capital in banks, on an individual basis.

2) In applying the instrument of transfer of a portion of assets or liabilities to a buyer bank or a bridge bank, the assessed risk exposure of the portion of assets subject to transfer shall be applied for determining the recapitalization amount.

3) Recapitalization amount is the multiplication of the total amount of bank risk exposure and total capital requirements of the bank (the sum of the amount of required capital to meet minimum ratios of regulatory capital, additional capital requirement and combined buffer).

$$\text{recapitalization amount} = \text{total risk exposure amount} \times (\text{minimum capital requirement} + \text{additional capital requirement} + \text{combined buffer})$$

(4) If the recapitalization amount, calculated in Paragraph 4 of this Article, is less than the amount required to meet the minimum leverage requirement, then the amount of the minimum leverage requirement is taken into account as the recapitalization amount.

## **Adjusting recapitalization amount**

### **Article 6**

(1) Recapitalization amount referred to in Article 5, Paragraph 4 of this Decision the Agency may adjust in two segments: in the part of the amount of the total risk exposure amount after resolution and in the part related to the additional capital requirements.

(2) In the part related to the bank total risk exposure amount after resolution, and depending on the bank's risk profile, the Agency may reduce the total risk exposure amount, determined in accordance with Article 34, Paragraph 3 of the Decision on calculating capital in banks, by the total loss coverage amount, which cannot exceed 8% of the amount of the bank total assets, considering that the bank's total asset is at a lower level in the moment when it is already obvious that the resolution procedure will be initiated against the bank.

(3) In the part related to the additional capital requirements, it can be assumed that the expected general risk profile of the bank after resolution will be lower, so from that aspect, when determining the required recapitalization amount, the Agency may reduce imposed additional capital requirement referred to in Article 37, Paragraph 5 of the Law by up to 50% maximum.

## **MREL requirement for a banking group**

### **Article 7**

(1) The Agency shall determine MREL requirement for a banking group supervised by the Agency on a consolidated basis, and in a manner as described in Articles 4, 5 and 6 of this Decision, adhering to the criteria referred to in Article 250, Paragraph 3 of the Law and Article 3 of this Decision.

(2) Notwithstanding Article 4, Paragraph 2, the total amount of risk exposure on a consolidated basis shall be applied when determining the loss coverage amount.

(3) Notwithstanding Article 5, Paragraph 3, Item 1 of this Decision, the total amount of risk exposure on a consolidated basis shall be applied when determining the recapitalization amount, but only for those group members for which the liquidation or bankruptcy is not justified or feasible.

(4) Parent bank within a banking group is obliged to, apart from maintaining MREL requirement on an individual basis, maintain MREL requirement also on a consolidated basis for the banking group.

(5) MREL requirement for the banking group shall be met by regulatory capital, and eligible liabilities of a parent bank within the banking group on a consolidated basis.

## **Conditions for inclusion of eligible liabilities in calculating MREL requirement**

### **Article 8**

(1) Eligible liabilities of the bank shall be included in the calculation of MREL requirement only if they meet the following conditions (qualified eligible liabilities):

1) instrument on the basis of which the bank's liability occurred, is issued and fully paid-in,

- 2) creditor on the basis of liabilities is not the bank itself, nor the bank issued a guarantee, surety or any other collateral for it,
- 3) bank did not, directly or indirectly, funded the investment into the instrument, i.e. liability,
- 4) the remaining maturity of the liability is at least a year,
- 5) liability did not occur on the basis of derivatives,
- 6) liability did not occur on the basis of insured deposit,
- 7) liability did not occur on the basis of deposit whose purpose is to secure the bank's receivables, or the liability occurred on the basis of such deposit, and the amount of that liability is higher than the amount of receivables – for the difference between the amount of liability and the amount of receivables.

(2) If, on the basis of liability referred to in Paragraph 1 of this Article, the creditor was provided with the right to request an early repayment, the maturity date referred to in Item 4 of this Paragraph shall be the first date when the creditor may request an early repayment.

(3) MREL requirement calculation may not include eligible liabilities occurred on the basis of contractual relations to which a foreign law is being applied, if, according to such law, the Agency's ruling by means of which the conversion into capital or write-off (reduction) of liability principal or debt instruments can not be executed.

(4) For eligible liabilities governed by the foreign law, the bank must possess an appropriate proof on the fact that the Agency's ruling, by means of which the conversion into capital or write-off (reduction) of liability principal or debt instruments, may be executed according to the applicable law, and must ensure that the contracts relating to the eligible liabilities governed by the foreign law, meet the requirements referred to in Article 256, Paragraph 1 of the Law.

### **Deadline for meeting MREL requirement**

#### **Article 9**

(1) Pursuant to Article 250 of the Law and provisions of this Decision, the Agency, by means of the ruling, shall determine MREL requirement for the bank which the bank must meet within the stipulated deadline.

(2) Deadline referred to in Paragraph 1 of this Article may not be longer than 4 years. In order to meet MREL requirement within the stipulated deadline, the Agency may define for the bank planned amounts of MREL requirement on an annual basis, which the bank must meet.

(3) Application of Paragraphs 1 and 2 of this Article does not prevent the Agency to revise the deadline for meeting MREL requirement in accordance with the assessment, taking into account the following:

- 1) amendments of the resolution strategy and instruments for the bank;
- 2) change in the bank's financial position;
- 3) probability that the bank executes the replacement of liabilities which no longer meet the criteria of eligibility or maturity and

4) other objective circumstances which prevent meeting MREL requirement within the stipulated deadline.

(4) After the expiration of the deadline referred to in this Article, MREL at the bank's disposal must be equal to the minimum requirements for own funds and eligible liabilities, determined in accordance with Article 250, Paragraph 2 of the Law and provisions of this Decision.

### **Transitional and final provisions**

#### **Article 10**

(1) This Decision shall come into force on the eighth day from the day of its publication in the "Official Gazette of Republika Srpska".

(2) After this Decision comes into force, the Decision on minimum requirements for own funds and eligible liabilities ("Official Gazette of Republika Srpska", No.: 20/18) shall become null and void.

Number: UO-410/23

Date: 20 February 2023

PRESIDENT OF THE  
MANAGEMENT BOARD  
Bratoljub Radulović