

Pursuant to Article 258, Paragraph 7 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 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 47th session held on February 26, 2018, adopted the following:

D E C I S I O N
ON MEASURES OF PROTECTION
OF COUNTERPARTIES

Subject of Decision

Article 1

- (1) This Decision shall stipulate in more detail protective measures for counterparties, as well as the types of contracts and financial instruments to which the protective measures for counterparties shall apply.
- (2) Provisions of this Decision shall apply to banks with headquarters in Republika Srpska, which have obtained the operating license from the Banking Agency of Republika Srpska (hereinafter: the Agency) and to members of the banking group.

**Protection of counterparties during partial
transfer of assets, rights, and liabilities**

Article 2

- (1) Protection of counterparties shall apply in the following cases:
 - 1) when the Agency cancels or amends the terms of contract in which the bank under resolution procedure is one of the parties and ensures that the bridge bank or an asset management company becomes the counterparty instead of the bank under resolution procedure,
 - 2) when the Agency is not transferring total assets, rights, and liabilities of the bank under resolution procedure to the bridge bank or an asset management company, and
 - 3) when the Agency is not transferring total assets, rights, and liabilities from the bridge bank to one asset management company.
- (2) The bank cannot, in the course of resolution procedure:
 - 1) transfer to the acquirer assets which secure the settlement of a specific liability, if, along with the transfer of the assets, the acquirer failed to take over that liability and if the bank failed to retain all rights towards the acquirer that it had had towards the earlier debtor on the basis of secured receivables,

- 2) transfer to the acquirer a liability whose settlement is secured with a pledge right, financial collateral or another similar right, including repo transactions, covered bonds or liabilities from financial instruments that are being used for risk protection and comprise an integral part of assets for coverage and which are ensured in a similar manner as covered bonds, if the creditor has failed to retain all rights towards the acquirer that it had had towards the earlier debtor and provider of means of collateral on the basis of secured receivables,
 - 3) transfer rights towards the provider of means of collateral referred to in Item 2 of this Paragraph, unless the receivable secured with those means is also transferred, and
 - 4) use the right on the basis of the transactions referred to in this Article, request its change or termination of validity, if, due to that, the receivable referred to under this transaction would no longer be secured.
- (3) Notwithstanding Paragraph 1 of this Article, the Agency may transfer the secured deposits that are subject to the contract referred to in that Paragraph without simultaneous transfer of other assets or liabilities that are subject to the same contract, and it may also transfer, amend, or write off those assets and liabilities without simultaneous transfer of secured deposits, under the condition that it is necessary in order to ensure full protection of those deposits.

**Types of contracts and agreements to which
protective measures of Counterparties shall apply**
Article 3

- (1) The types of contracts, i.e. agreements to which protective measures for counterparties shall apply shall be the following:
- 1) contract on financial collateral with the transfer of rights of ownership under which that collateral is being used for securing the settlement of a specific liability of the debtor, wherein upon the transfer of the assets the acquirer shall take over that liability, and the creditor shall retain all rights towards the acquirer that it had had towards the earlier debtor on the basis of that secured receivable,
 - 2) covered bonds, and
 - 3) agreements on collateral, which shall include the following:
 1. contracts on warranties, i.e. guarantees,
 2. pledge rights, and
 3. contracts on pledges, i.e. guarantees,
 4. contracts on leasing securities or commodities that do not imply transfer of full ownership over collateral and that include one party (the lease provider) which is loaning securities to the counterparty in exchange for compensation or payment of interest and in which the loan recipient provides to the loan provider collateral in the course of life of the loan,
 - 4) contracts on setting off under which two or more receivables i.e. liabilities of the bank under resolution procedure and counterparty may be set off mutually,

- 5) agreements on netting,
 - 6) contracts on structured financing, including securitization and instruments that are being used for risk protection and comprise an integral part of assets for coverage, and which are, under current regulations, secured in a manner similar to covered bonds, on the basis of which one of the parties from the agreement or the custodian, trustee or holder acquires and holds warranties.
- (2) Agreements on collateral referred to in Paragraph 1, item 3, Subitem 3 of this Article shall pertain only to those in which the rights or assets with which the pledge right is connected or with which it would be connected in case of the event of execution are sufficiently determined or it is possible to determine them in compliance with the terms of the agreement and the applicable law.
 - (3) The Agency shall apply the provisions under Article 2 of this Decision and Paragraphs 1 and 2 of this Article independently of the number of contractual parties in agreements / contracts and independently of the following:
 - 1) whether the legal relations had onset on the basis of the contract, transfer of the right of ownership for the purpose of collateral or in another manner, or they onset on the grounds of the law,
 - 2) whether the law of another country applies to those legal relations in full or partially.

**Protection of contracts on setting off and
agreements on netting
Article 4**

- (1) The contracts on setting off concluded between the bank and counterparty shall be deemed as agreements on setting off referred to in Article 3, Paragraph 1, item 4 of this Decision if they relate to the following:
 - 1) rights and liabilities that result from financial contracts or derivatives,
 - 2) rights and liabilities towards payment systems or systems for settlement of securities, and are connected with their operations as payment systems or systems for settlement of securities.
- (2) The Agency may, in individual cases, decide that the contracts on setting off concluded between the bank and counterparty or parties, if they relate to the types of rights and liabilities that are not listed under Paragraph 1 of this Article, may be deemed as contracts on setting off if they are recognized for the requirements of risk mitigation in compliance with applicable regulatory regulations, and if the protection is, undoubtedly, a condition for that recognition.
- (3) Agreements on netting concluded between the bank and counterparty shall be deemed as agreements on netting pursuant to Article 3, Paragraph 1, item 5, if they relate to the following:
 - 1) rights and obligations resulting from financial contracts or derivatives,

2) agreements that concern rights and liabilities towards payment systems or systems for settlement of securities, and are related with their operations as payment systems or systems for settlement of securities.

- (4) The Agency may, in individual cases, decide that the agreements on netting concluded between the bank and counterparty or parties, if they relate to the types of rights and liabilities that are not listed in Paragraph 3 of this Article, may be deemed as agreements on netting, if they are recognized for the requirements of risk mitigation pursuant to applicable regulatory regulations, and if the protection is, undoubtedly, a condition for that recognition.

**Protection of contract on structured
financing and covered bonds
Article 5**

- (1) The contracts on structural financing referred to in Article 3, Paragraph 1, item 6 of this Decision, when they relate to securitization, include the following:
- 1) securitizations in which the relevant exposures are allocated in tranches and with full transfer of the right of ownership transferred from the balance sheet of the initiator onto the bank under resolution procedure (securitization on the basis of actual sale – traditional securitization),
 - 2) securitization on the basis of contractual instruments, in which the subject assets remain in the balance sheet of the bank under resolution procedure (synthetic securitization).
- (2) In case of securitization on the basis of actual sale, any role of the initiator in the structure, including loan servicing, provision of any form of risk protection or provision of liquidity, shall be deemed as an obligation representing a part of the contract on structural financing.
- (3) In case of synthetic securitization, the pledge right shall be deemed as a right that represents a part of the contract on structured financing only if it is connected with certain assets that are sufficiently determined or that is possible to determine sufficiently in compliance with the terms of the contract and applicable legislation.
- (4) For agreements that comprise the structure of securitization that covers mutual relations between the initiator, issuer, custodian, service provider, cash funds manager, and other contractual parties in contracts on exchange and credit protection, it shall be deemed that they represent a part of the contract on structured financing if those mutual relations are directly connected with the relevant assets and payments which need to be performed from funds acquired from those assets for the benefit of holders of structured instruments. Those mutual relations include liabilities and rights connected with the relevant assets, liabilities on the basis of issued instruments and agreements on insurance, including transactions with derivatives, necessary for maintenance of the flow of payments within the framework of those liabilities.
- (5) The Agency may, in addition to the agreement referred to in Paragraph 4 of this Article, on an individual basis and taking into account the specific structure of contracts on structured financing pursuant to Article 3, Paragraph 6 of this Decision, make the decision that other

agreements between contractual parties, such as agreements on loan servicing, which are not directly connected with the relevant assets and payments that need to be performed, represent a part of such a contract on structured financing.

Transitional and final provisions

Article 6

This Decision shall enter into effect on the eighth day from its publication in the “Official Gazette of Republika Srpska”.

No.: UO-368/18
Date: 26 February, 2018

PRESIDENT OF THE
MANAGEMENT BOARD
Mira Bjelac