

Pursuant to 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), Article 6, Paragraph 1, Item b), Article 11 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) and Article 21 and 22 of the Law on Microcredit Organizations ("Official Gazette of Republika Srpska", No.: 64/06 and 116/11), the Management Board of the Banking Agency of Republika Srpska, at 16<sup>th</sup> session, held on 15 November 2019, issued the

## **DECISION**

### **ON PERFORMING SUPERVISION OF MICROCREDIT ORGANIZATIONS AND UNDERTAKING SUPERVISORY MEASURES**

#### **1. General provisions**

##### **Subject of the Decision**

##### **Article 1**

(1) This Decision shall regulate in more detail the conditions and method of performing supervision of microcredit organizations (hereinafter: MCO), supervision plan and acting of the authorized persons of the Banking Agency of Republika Srpska (hereinafter: the Agency) when performing supervision of MCO and undertaking supervisory measures, and MCOs' obligations during and after the supervision.

(2) The main objective of the supervision performed by the Agency is to preserve confidence in the microcredit sector of Republika Srpska, and ensure stability of the banking system as a whole.

(3) The Agency, in accordance with the Law on Microcredit Organizations (hereinafter: the Law) and regulation enacted pursuant to the Law and other relevant regulations, performs the supervision of operations of MCO headquartered in Republika Srpska, organizational units of MCO headquartered in the Federation of Bosnia and Herzegovina and in Brcko District, operating in Republika Srpska.

(4) The Agency performs supervision over MCO referred to in Paragraph 3 of this Article in order to review the acting of MCO in accordance with the Law and other regulations enacted pursuant to the Law and other relevant regulations, as well as standards and rules of the profession.

(5) The application of principles of legality and adhering to the standards and rules of the profession is the primary responsibility of the governing, supervising and managing bodies of the MCO and represents a minimum condition for its successful and stable functioning.

##### **Supervision tasks and scope**

##### **Article 2**

(1) The Agency, in accordance with the Law and competences stipulated by the Law on the Banking Agency of Republika Srpska, when performing the supervision, shall review the legality, quality, efficiency and stability of the MCO operations, including organization, strategies, policies, processes and procedures which MCO adopts and applies in order to align its operations with the regulations and standards of prudential business operations and good practices.

(2) When performing the supervision, the Agency shall verify and assess:

- 1) whether MCO operates in accordance with the Law and the Agency's regulations adopted pursuant to the Law, other relevant regulations, as well as standards of prudential business operations and good practices,
- 2) balance and maintaining of MCO capital/holding, taking into account risks to which MCO is exposed or may be exposed in its operations,
- 3) adequacy of management system in MCO, including the assessment of organizational structure, quality of management and work of MCO bodies and implementation of business plans, risk management system, internal control system and work of internal and external audit,
- 4) MCO financial condition, including:
  1. asset quality,
  2. liquidity and
  3. financial result.
- 5) adhering to restraints stipulated by the Law and other relevant regulations, and the process of determining, monitoring and controlling of defined restraints,
- 6) business operations and transactions with persons related to MCO,
- 7) application of regulations from the area of anti-money laundering and counter-terrorism financing,
- 8) application of regulations from the area of protection of rights and interests of microcredit users,
- 9) accuracy and adequacy of data and information MCO is obliged to publicly disclose and
- 10) other segments and indicators of MCO operations which have an effect or may have an effect on the efficient and stable MCO operations.

(3) When the Agency based on collected facts assesses as necessary, apart from supervision referred to in Paragraph 2 of this Article, it shall conduct an enhanced supervision over MCO operations, in the following manner:

- 1) increase the number and frequency of on-site supervision of MCO,
- 2) order additional or more frequent reporting to the Agency by MCO.

## **2. The method of performing supervision**

### **Supervision types and methods**

#### **Article 3**

(1) The Agency shall perform supervision over MCO operations by:

- 1) off-site supervision,

- 2) on-site supervision,
- 3) issuing relevant enactments in accordance with its competences and
- 4) imposing supervisory measures.

(2) Pursuant to the plan of supervision over MCO operations, the Agency is obliged to perform supervision over MCO regularly and continuously, in accordance with Article 4 of this Decision, and periodically, in accordance with Article 6 of this Decision.

(3) Off-site supervision over MCO operations shall be conducted by the Agency's employees who are authorized to do so according to their job function.

(4) On-site supervision over MCO operations shall be conducted by the Agency's employees pursuant to authorizations issued by the Agency's director.

(5) Authorization referred to in Paragraph 4 of this Article shall define the scope and timeframe of the supervision, and in case authorized persons identify the need to expand the supervision beyond the scope determined by the initial authorization, they shall request from the Agency's director an additional authorization.

(6) Notwithstanding Paragraph 4 of this Article, for conducting specific tasks in on-site supervision, the Agency may hire a certified auditor, audit firm or other certified professional to perform on-site supervision over MCO operations at its own expense.

(7) Persons referred to in Paragraph 6 of this Article shall have equal authorizations and responsibilities as the Agency's authorized persons when performing on-site supervision over MCO operations.

#### **Off-site supervision**

##### **Article 4**

(1) The Agency shall perform off-site supervision over MCO operations by continuous collecting, review and analysis of reports pursuant to the Law and relevant regulations, review of reports by external auditor, monitoring and review of other data, information and documents delivered by the MCO and/or third parties, which relate to the MCO operations.

(2) Reports, other documentations and information referred to in Paragraph 1 of this Article shall be reports (annual, semi-annual, quarterly, monthly and other) MCO deliver to the Agency with the content, timeframe and in the method pursuant to the laws and by-laws of the Agency, reports of external auditor, then correspondence with MCO, information, reports, statements which shall be delivered by MCO at the Agency's request, and other available reports, information and notifications relating to MCO operations.

(3) Based on reports and information referred to in Paragraphs 1 and 2 of this Article, the Agency shall compile periodical analysis of MCO operations, which particularly encompasses capital/holding, asset quality, profitability and liquidity, and adhering to legal restraints.

#### **Minutes on performed off-site inspection**

##### **Article 5**

(1) Minutes on performed off-site inspection shall be compiled only when in the procedure of off-site supervision over MCO operations the following has been identified:

- 1) irregularities and illegalities in MCO operations, including untimely or inaccurate delivering of stipulated reports, and other reports and information at the Agency's request or
- 2) basis for undertaking specific supervisory measure.

(2) The procedure for compiling, issuing minutes referred to in Paragraph 1 of this Article and submitting an objection to the same by MCO, and undertaking supervisory measures shall be conducted in the same manner as in performing on-site supervision in accordance with Articles 8, 9 and 10 of this Decision.

(3) Minutes referred to in Paragraph 1 of this Article, as well as the minutes supplement, shall be signed by the employees referred to in Article 3, Paragraph 3 of this Decision.

### **On-site supervision**

#### **Article 6**

(1) The Agency shall perform on-site supervision over MCO operations in MCO headquarters and/or in headquarters of its organizational units, which encompasses the entire MCO operations (full inspection) or particular part/parts of MCO operations (targeted inspection), and inspection of execution of orders according to established supervision plan of the Agency.

(2) The Agency shall determine the frequency and intensity of performing on-site supervision in relation to the degree of irregularities and/or non-compliance identified in MCO operations, size and significance for the microcredit sector in Republika Srpska, type, scope and complexity of operations conducted by MCO, as well as the principle of proportionality.

(3) On-site supervision over MCO operations shall be conducted by:

- 1) review of bookkeeping records, business books, auxiliary and other records and calculations, reports MCO are obliged to compile, policies, procedures and other internal enactments, and other documentation relating to the MCO operations, in material (paper) form and/or electronic files and in the form requested by the Agency's authorized persons referred to in Article 3, Paragraph 4 and/or 6 of this Decision and by inspection of reliability of information system and enabling access to database the MCO uses,
- 2) gathering written and oral explanations by responsible person and/or manager and/or employee of MCO and/or MCO management board and/or other MCO governing bodies.

(4) MCO is obliged to provide authorized persons referred to in Article 3, Paragraph 4 and/or 6 of this Decision the possibility to perform supervision of its operations in MCO headquarters and/or all its organizational units.

(5) MCO is obliged to provide authorized persons referred to in Article 3, Paragraph 4 and/or 6 of this Decision the possibility to perform supervision of compliance of business books (in written and electronic form) and other documentation with regulation.

(6) Authorized persons referred to in Article 3, Paragraph 4 and/or 6 of this Decision shall perform supervision on working days during working hours, and when necessary due to the scope and nature of supervision, also outside MCO working hours.

(7) At the request of authorized persons referred to in Article 3, Paragraph 4 and/or 6 of this Decision, in the course of supervision procedure, the MCO is obliged to ensure:

- 1) access to MCO premises and all organizational units, while adhering to its safety procedure,
- 2) separate premise for performing supervisory tasks,
- 3) copies of documents relating to the supervision subject matter and insight into original documentation,
- 4) direct communication with responsible person, managers and employees of MCO, as well as members of the management board and/or other governing bodies in order to obtain necessary explanations and
- 5) written answers of persons referred to in Item 4 of this Paragraph to the questions important for the supervision execution.

(8) MCO is obliged to appoint its representative(s) who will in the course of supervision provide all necessary assistance for unhindered performance of on-site supervision.

#### **Notification on on-site supervision**

##### **Article 7**

(1) The Agency shall deliver to the MCO notification on on-site supervision 15 (fifteen) days prior to the start of supervision.

(2) Notification on on-site supervision, apart from the supervision subject matter, shall contain data on planned start and duration of on-site supervision, the list of documents and information which are minimally necessary for the preparation and conducting of on-site supervision, and other information required for performing on-site supervision.

(3) Notwithstanding Paragraph 1 of this Article, the Agency may deliver notification on on-site supervision before the very start of on-site supervision execution.

(4) If in the course of preparation and conducting of on-site supervision specialized software tools are to be used, which require direct access to the MCO information system, notification on planned on-site supervision shall also contain the list of authorized persons who will execute the preparation and performance of supervision, period in which MCO should provide access to the MCO information system, resources MCO minimally must ensure for providing access to the MCO information system, and other information necessary for the preparation and performance of on-site supervision.

#### **Minutes on performed on-site supervision**

##### **Article 8**

(1) After performed on-site supervision, authorized persons referred to in Article 3, Paragraph 4 and/or 6, shall be obliged to compile and submit the minutes on performed supervision within 20 (twenty) days from the day of on-site supervision finalization.

(2) The day of on-site supervision finalization shall be the last day of performing supervision in the premises of the MCO and/or the Agency.

(3) Delivering the minutes to the MCO shall mean that the same has been delivered to the members of the management board, MCO governing bodies, and managers and/or employees of MCO whose competence was the segment which was the subject matter of supervision, and the opposite cannot be proved.

(4) The Director of the Agency may by a conclusion determine another deadline for delivering minutes on performed supervision in relation to the deadline referred to in Paragraph 1 of this Article.

(5) Minutes on performed on-site supervision and minutes supplement referred to in Article 9 of this Decision shall be signed by authorized persons referred to in Article 3, Paragraph 4 and/or 6 who performed the supervision.

(6) MCO may file an objection to the delivered minutes within 8 days from the receipt day of the same.

(7) Notwithstanding Paragraph 6 of this Article, the Agency may, at the MCO request, prolong the deadline for delivering objection to the minutes, but only in cases when the minutes findings refer to the competences of the MCO management board.

(8) If MCO fails to deliver the objection to the minutes within stipulated deadline, or by means of its objection justifiably does not dispute the findings from the minutes identifying irregularities and illegalities in MCO operations, the Agency shall impose to the MCO an appropriate measure stipulated by the Law and this Decision.

### **Supplement of minutes on performed on-site supervision**

#### **Article 9**

(1) The Agency shall consider objections to the delivered minutes referred to in Article 8, Paragraph 6 of this Decision.

(2) The answer to the objection the Agency shall deliver to the MCO in the form of the minutes supplement no later than 15 working days from the day of objection receipt.

(3) The MCO has no right of objection to the minutes supplement delivered by the Agency.

### **Suspension and termination of on-site supervision procedure**

#### **Article 10**

(1) The Agency shall suspend the procedure of on-site supervision if in an individual procedure of on-site supervision no irregularities and illegalities were identified, which will be stated in the minutes on performed on-site supervision, and shall compile the minutes and conclusion on procedure suspension.

(2) If in the course of on-site supervision procedure the MCO fails to ensure that the supervision is being conducted in accordance with Article 6 of this Decision, the Agency shall terminate the supervision procedure, and shall compile the minutes and issue the conclusion on procedure termination.

(3) It shall be deemed that the MCO failed to provide the Agency with the possibility to perform supervision and failed to cooperate with the Agency's authorized persons if it failed to act according to the Article 6 of this Decision, as well as in the following cases:

1) if within a particular timeframe it failed to deliver all requested data and proof, especially data which the MCO is obliged to have at its disposal under the Law, by-laws and/or other relevant regulations and/or standards of prudential business operations,

2) if it deliberately or by gross negligence delivers data which are incorrect, i.e. incomplete.

(4) When in the course of on-site supervision it is determined that there is a previous issue without whose resolution the subject matter cannot be resolved, and where such issue is independent legal unity whose consideration is outside the Agency's competences, the procedure shall be terminated until the competent authority resolves the disputed issue.

(5) The Agency shall compile the minutes and issue the conclusion on termination of supervision procedure, but only in relation to the disputed issue referred to in Paragraph 4 of this Article, while in relation to the subject matter of the supervision it shall continue to perform the supervision without issuing a separate act.

(6) The conclusion referred to in Paragraphs 1, 2 and 5 of this Article shall be delivered to the MCO, and it may file a complaint to the Agency's Director within 15 days from the day of minutes delivery.

### **3. Supervisory measures**

#### **Types and measures of supervision**

##### **Article 11**

(1) If the Agency determines that the MCO acted contrary to the provisions of the Law, the Agency's by-laws, other relevant regulations or standards of prudential business operations, the Agency shall against that MCO undertake one or more supervisory measures pursuant to the Law.

(2) If the Agency assesses there has been severe violation of regulation and business principles endangering or which may endanger financial condition or liquidity of the MCO, the Agency may also impose to MCO other measures to remedy irregularities and illegalities, as follows:

1) order MCO to develop and implement an activity plan for alignment of its operations with regulations and determine a deadline for its application,

2) request from the governing and managing bodies to analyze the condition, define measures for resolving identified problems, and develop and implement an activity plan for resolving such problems and determine deadlines for its implementation,

3) order MCO to implement reduction, i.e. restriction of exposure for concluding new contracts on microloans, improve the procedure of collection of due receivables, and accurately value balance and off-balance sheet items,

- 4) order MCO to set up or improve the system and process of risk management, independent system of internal controls, internal audit function and accounting and information system depending on the size and significance of MCO for the microcredit sector,
- 5) order MCO to close one or more organizational units, i.e. suspend the expansion of business network,
- 6) order MCO to use audited net profit, i.e. audited net excess of income over expenditure for increase of capital/holding,
- 7) order MCO to meet special requirements relating to maintaining of liquidity in case the Agency assesses that the above has deteriorated or may deteriorate in the upcoming period,
- 8) order for MCO more frequent or additional reporting to the Agency on individual indicators of its operations.

(3) If the organizational unit of MCO headquartered in the Federation of Bosnia and Herzegovina and Brcko District of Bosnia and Herzegovina, when performing operations on the territory of Republika Srpska, acts contrary to the provisions of the Law and the Agency's by-laws, the Agency may to such MCO organizational unit impose an appropriate supervisory measure or revoke the consent for performing microcredit activities on the territory of Republika Srpska.

(4) Supervisory measures shall be imposed by the Agency's ruling, and it shall be delivered to the MCO after the deadline for submitting an objection to the minutes on performed supervision has expired, i.e. after the Agency provides an answer to the MCO objection to the minutes on performed supervision in accordance with this Decision.

### **Discretionary right of the Agency**

#### **Article 12**

(1) The Decision on a measure or measures the Agency undertakes against the MCO shall be issued based on a discretionary assessment, taking into account the following criteria:

- 1) the severity of identified irregularities and illegalities,
- 2) demonstrated readiness and capability of the MCO bodies to remedy identified irregularities and illegalities,
- 3) to which degree the MCO is endangering financial discipline and unhindered functioning of the microcredit sector.

(2) Irregularities and illegalities in MCO operations, in a sense of this Decision, shall mean MCO operating contrary to the Law, other relevant regulations and general enactments, and special regulatory requirements stipulated by the Agency.

(3) In case of identified irregularities and illegalities in MCO operations, when undertaking measures, the significance of identified irregularities and illegalities shall be taken into account, and which are assessed particularly in relation to:

- 1) MCO financial position,



- 2) MCO exposure to individual types of risks (credit, operational, reputation, and other),
- 3) the impact of occurred irregularities and illegalities on the MCO future position and stability of the microcredit sector in Republika Srpska,
- 4) the number and interconnectedness of identified irregularities and illegalities,
- 5) duration and frequency of occurred irregularities and illegalities and
- 6) MCO legality of operations.

(4) When assessing demonstrated readiness and capabilities of MCO bodies to remedy identified irregularities and illegalities, the following shall be assessed in particular:

- 1) capability of governing and managing bodies to identify, assess and monitor risks arising from MCO operations and manage those risks,
- 2) efficiency of established internal control system,
- 3) activities undertaken and their efficiency in eliminating identified irregularities and illegalities, especially in executing previously imposed measures and
- 4) degree of cooperation of governing and managing bodies and other employees of MCO with the Agency, i.e. with authorized persons in the course of supervision.

(5) When assessing to which extent the MCO is endangering financial discipline and unhindered functioning of the microcredit sector, the importance of MCO in the microcredit sector of Republika Srpska shall be assessed.

### **Written warning to MCO**

#### **Article 13**

(1) If the Agency during supervision identifies weaknesses and deficiencies that do not constitute as violation of regulations, nor significantly influence the financial condition, but could have such influence if not eliminated timely, the Agency may issue a written warning to the MCO to undertake actions and activities to improve operations.

(2) The written warning to the MCO shall:

- 1) point out to identified weaknesses, deficiencies or inconsistencies in operations,
- 2) set out the deadline and manner of acting of MCO to remedy weaknesses or deficiencies in MCO operations and
- 3) set out the deadline, i.e. dynamics under which the MCO shall report to the Agency on executing obligations stated in the written warning.

(3) The Agency shall inspect whether the MCO eliminated identified weaknesses or deficiencies after the expiration of set out deadline from Paragraph 2, Item 3) of this Article or before the expiration of this deadline, after receiving the MCO's written notification, including relevant documentation, that weaknesses or deficiencies have been eliminated.

(4) If the MCO fails to meet the obligations from the written warning within stipulated deadline and in the manner defined by the written warning, the Agency may undertake one or more supervisory measures against the MCO, pursuant to Article 11 of this Decision, in accordance with criteria stipulated in Article 12 of this Decision.

### **Written order**

#### **Article 14**

(1) If the Agency during the supervision of MCO operations identifies irregularities and illegalities, the Agency shall issue the ruling imposing measures to remedy identified irregularities and illegalities.

(2) The ruling referred to in Paragraph 1 of this Article shall define the deadline and manner in which the MCO shall remedy identified irregularities and illegalities, as well as the deadline for delivering to the Agency the report on executed activities, with appropriate proof on execution of imposed measures.

(3) The ruling referred to in Paragraph 1 of this Article shall be delivered to the MCO's director, who is responsible, without any delay, to inform the members of the MCO management board and other MCO responsible persons of the ruling content.

(4) MCO shall be obliged to deliver to the Agency a written notification on execution of measures in the manner and within deadlines defined by the ruling referred to in Paragraph 1 of this Article.

(5) The Agency shall inspect the execution of orders stemming from the ruling after the expiration of deadlines for their execution, or before the expiration of deadlines, i.e. after receiving from the MCO a written notification, with appropriate proof, that the orders have been executed.

(6) The procedure of supervision of execution of orders and measures imposed by the ruling referred to in Paragraph 1 of this Article, the Agency shall perform in accordance with this Decision.

### **4. Administrative and misdemeanor proceedings**

#### **Administrative proceedings**

##### **Article 15**

(1) Pursuant to the facts determined in the procedure and compiled minutes, the Agency shall issue the ruling on the issue which is the procedure subject matter.

(2) The ruling referred to in Paragraph 1 of this Article is final.

#### **Issuing a misdemeanor warrant and submitting request for initiating misdemeanor proceedings**

##### **Article 16**

Apart from issuing supervisory measures stemming from this Decision, the Agency may issue a misdemeanor warrant or submit request for initiating misdemeanor proceedings in accordance with the regulations governing the misdemeanor proceedings, if it determines that the MCO acted contrary to the provisions of the Law or provisions of other relevant laws.

## **5. Transitional and final provisions**

### **Article 17**

(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) On the day of this Decision coming into force, the Decision on inspection and supervision of microcredit organizations (“Official Gazette of Republika Srpska”, No.: 03/07 and 104/15) shall cease to be valid.

(3) All supervision procedures commenced before this Decision coming into force shall be performed according to the provisions of the Decision referred to in Paragraph 2 of this Article.

Number: UO-110/19

Date: 15 November 2019

PRESIDENT OF THE  
MANAGEMENT BOARD  
Bratoljub Radulović  
[duly signed and sealed]