

Pursuant to Article 65 of the Law on Leasing („Official Gazette of Republika Srpska“, No. 70/07 and 116/11), 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), 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), the Management Board of the Banking Agency of Republika Srpska at its 5th session held on 22 February 2024 adopted the

DECISION

ON CONDUCTING SUPERVISION OF A LEASING PROVIDER AND UNDERTAKING SUPERVISORY MEASURES

1. General provisions

Decision subject

Article 1

(1) The Decision on conducting supervision of a leasing provider and undertaking supervisory measures (hereinafter: the Decision) shall stipulate in more detail the conditions and method of conducting supervision of a leasing provider (hereinafter: LP), the supervision plan and procedures of authorized persons of the Banking Agency of Republika Srpska (hereinafter: the Agency) during the supervision of LP and undertaking the supervisory measures, as well as the obligations of LP during and after supervision.

(2) The Agency, in accordance with the Law on Leasing (hereinafter: the Law) and regulations issued pursuant to the Law and other relevant legal regulations, shall supervise the operations of LPs headquartered in Republika Srpska, the organizational units of LPs headquartered in the FBiH and headquartered in the Brčko District of BiH, which operate in Republika Srpska.

(3) The primary objective of supervision carried out by the Agency is to monitor the legality of operations, the implementation of regulations, the maintenance of stipulated prudential standards, and professional rules and good business practices with the aim of preserving confidence in the LP sector and ensuring the stability of the banking system as a whole.

(4) The implementation of the principles of legality, adhering to the stipulated standards of prudent operations, and the rules of the profession and good business practices, is the primary responsibility of the management, supervision and governing bodies of the LP and represents the minimum conditions for the successful and stable operation of the LP.

Supervision tasks and scope

Article 2

(1) The Agency, in accordance with the Law and the competencies stipulated by the Law on the Banking Agency of Republika Srpska, when conducting supervision, shall verify the legality, quality, efficiency and stability of the LPs business operations, including the organization, strategies, policies, actions and procedures that the LP adopts and applies in order to harmonize its business operations with regulations, prudential standards, and professional rules and good business practices.

(2) When conducting supervision, the Agency shall verify:

- 1) whether LP operates in accordance with the Law and the regulations of the Agency issued on the basis of the Law, other relevant legal regulations, as well as in accordance with prudent business standards and professional rules and good business practices,
- 2) the condition and maintenance of the LP capital, considering the risks to which the LP is exposed or may be exposed in its operations,
- 3) the adequacy of the LP management system, including the organizational structure, the quality of management and work of the LP bodies and the implementation of business plans, the risk management system, the internal control system and the work of internal and external audit,
- 4) LP financial condition including:
 1. asset quality
 2. liquidity
 3. financial result
- 5) compliance with the restrictions stipulated by the Law and other relevant legal regulations, and the process of establishing, monitoring and controlling the stipulated restrictions,
- 6) business operations and transactions with persons related to LP,
- 7) application of regulations in the field of anti-money laundering and counter-terrorism financing,
- 8) application of regulations in the field of LP consumer protection,
- 9) accuracy and adequacy of data and information that the LP is obliged to publicly disclose and
- 10 other segments and indicators of the LP business operations that have an impact or may have an impact on the efficient and stable operations of the LP.

(3) When the Agency, based on the facts collected, deems it necessary, it shall conduct enhanced supervision of the LP business operations by:

- 1) increasing the number and frequency of on-site supervision of the LP,
- 2) requiring additional or more frequent reporting to the Agency by the LP.

2. Method of conducting supervision

Supervision method and type

Article 3

(1) The Agency shall supervise LP operations as follows:

- 1) off-site supervision,
- 2) on-site supervision,

- 3) by issuing relevant acts in accordance with its competences and
 - 4) by imposing supervisory measures.
- (2) Based on the plan for supervision of LP operations, the Agency shall be obliged to supervise LP regularly and continuously in accordance with Article 4 of the Decision and occasionally (periodically) in accordance with Article 6 of the Decision.
- (3) Off-site supervision of LP operations shall be carried out by employees of the Agency who are authorized to do so in accordance with their position of employment.
- (4) On-site supervision of LP operations shall be carried out by employees of the Agency based on the authorization of the Agency's Director.
- (5) The authorization referred to in Paragraph 4 of this Article shall determine the scope and time period covered by the supervision, and if the authorized persons determine the need to expand the supervision beyond the scope determined by the original authorization, they shall request additional authorization from the Agency's Director.
- (6) By way of exception from Paragraph 4 of this Article, for the performance of particular tasks in on-site supervision, the Agency may engage an authorized auditor, an auditing company or another authorized professional to perform on-site supervision of the LP operations at its expense.
- (7) The persons referred to in Paragraph 6 of this Article shall have the same powers and responsibilities as the authorized persons of the Agency when conducting on-site supervision of the LP operations.

Off-site supervision

Article 4

- (1) The Agency shall perform off-site supervision of the LP operations by continuously collecting, verifying and analyzing reports in accordance with the Law and other relevant regulations, reviewing the reports of the external auditor, monitoring and verifying other data, information and documents submitted by the LP and/or third parties, which relate to the LP operations.
- (2) Reports, other documentation and information referred to in Paragraph 1 of this Article shall mean reports that the LP submits to the Agency with the content, within the deadlines, in the manner and in accordance with the law and by-laws of the Agency, reports of the external auditor, and correspondence with the LP, information, reports, statements submitted by the LP at the request of the Agency, as well as other available reports, information and notifications related to the LP operations.
- (3) Based on the reports and information referred to in Paragraphs 1 and 2 of this Article, the Agency shall prepare a periodic analysis of the LP operations, which shall specifically include capital, asset quality, profitability and liquidity, and compliance with legal restrictions.

Minutes on conducted off-site supervision

Article 5

- (1) The minutes on conducted off-site supervision shall be prepared only when the following have been established in the procedure of off-site supervision of the LP operations:

- 1) irregularities and non-compliance in the LP operations, including untimely or inaccurate submission of required reports, and other reports and information at the request of the Agency, or
 - 2) grounds for undertaking a particular supervisory measure.
- (2) The procedure for preparing, issuing the minutes referred to in Paragraph 1 of this Article and submitting comments on them by the LP, and undertaking supervisory measures shall be carried out in the same manner as in the case of on-site supervision in accordance with Articles 8, 9 and 10 of the Decision.
- (3) The minutes referred to in Paragraph 1 of this Article as well as the supplement to the minutes shall be signed by the employees referred to in Article 3, Paragraph 3 of the Decision.

On-site supervision

Article 6

- (1) The Agency shall conduct on-site supervision of the LP operations at the headquarters of the LP and/or at the headquarters of its organizational units, which shall include the entire operations of the LP (full supervision) or a specific part/parts of the LP operations (targeted supervision) and supervision of the execution of orders pursuant to a ruling, all in accordance with the established supervision plan of the Agency.
- (2) The Agency shall determine the frequency and intensity of on-site supervision based on the degree of irregularities and/or non-compliance identified in the LP operations, the size and significance for the banking system in Republika Srpska, the type, scope and complexity of the operations performed by the LP, as well as the principle of proportionality.
- (3) On-site supervision of the LP operations shall be carried out:
- 1) by reviewing accounting documents, business books, auxiliary and other records and calculations, reports that the LP is obliged to compile, policies, procedures and other internal acts, and other documentation related to the LP operations, in material (paper) form and/or in the form of an electronic record on a medium and in the form required by the authorized persons of the Agency referred to in Article 3, Paragraph 4 and/or 6 of the Decision and by controlling the reliability of the information system and providing access to the database used by the LP,
 - 2) by obtaining written and oral explanations from the person responsible and/or managers and/or employees of the LP and/or the management board of the LP and/or other management bodies of the LP.
- (4) The LP shall be obliged to enable the authorized persons referred to in Article 3, Paragraph 4 and/or 6 of the Decision to carry out supervision of business operations at the LP headquarters and/or in all its organizational units.
- (5) The LP shall be obliged to enable the authorized persons referred to in Article 3, Paragraph 4 and/or 6 of the Decision to supervise the compliance of business books (in written and electronic form) and other documentation with regulations.

(6) The authorized persons referred to in Article 3, Paragraph 4 and/or 6 of the Decision shall conduct supervision on a working day during working hours, and when necessary, due to the scope and nature of the supervision, they may also conduct it outside the LP working hours.

(7) At the request of the authorized persons referred to in Article 3, Paragraphs 4 and/or 6 of the Decision, the LP shall be obliged to provide during the supervision procedure the following:

1) access to the LP premises and all organizational units, while adhering to the LP security procedures,

2) a separate office for performing supervision tasks,

3) copies of documents related to the subject of supervision and access to the original documentation,

4) direct communication with the person responsible, managers and employees of the LP, as well as members of the management board and/or other management bodies in order to obtain necessary explanations and

(5) written answers from the person referred to in Item 4) of this Paragraph to questions that are important for conducting supervision.

(8) The LP shall be obliged to appoint its representative(s), who will provide all necessary assistance during the supervision for the unhindered conduct of on-site supervision.

Notification on on-site supervision

Article 7

(1) The Agency shall submit a notification on on-site supervision to the LP 15 (fifteen) days prior to the commencement of supervision.

(2) The notification on on-site supervision, in addition to the subject of supervision, shall contain information on the planned commencement and duration of on-site supervision, a list of documentation and information that is minimally required for the preparation and conduct of on-site supervision, and other information necessary for the conduct of on-site supervision.

(3) By way of derogation from Paragraph 1 of this Article, the Agency may submit a notification on on-site supervision prior to the very commencement of on-site supervision.

(4) If specialized software tools that require direct access to the information system of the LP are used during the preparation and conduct of on-site supervision, the notification on the planned on-site supervision shall also contain a list of authorized persons who will prepare and conduct the supervision, the period during which the LP must ensure access to the LP information system, the resources that the LP must at least provide to enable access to the LP information system, and other information necessary for the preparation and conduct of on-site supervision.

Minutes on conducted on-site supervision

Article 8

- (1) After the on-site supervision has been carried out, the authorized persons referred to in Article 3, Paragraph 4 and/or 6 of the Decision shall be obliged to prepare and submit minutes on the conducted supervision within 20 (twenty) working days from the date of completion of the on-site supervision.
- (2) The date of completion of the on-site supervision is the last day of supervision in the premises of the LP and/or the Agency.
- (3) By submitting the minutes to the LP, it is considered that it has been submitted to the members of the management board, the management bodies of the LP, and the managers and/or employees of the LP in whose jurisdiction is the area that was the subject of the supervision, and the contrary cannot be proven.
- (4) The Director of the Agency may, by a conclusion, set a different deadline for submitting the minutes on the conducted supervision in relation to the deadline referred to in Paragraph 1 of this Article.
- (5) The minutes on conducted on-site supervision and the supplement to the minutes referred to in Article 9 of the Decision shall be signed by the authorized persons referred to in Article 3, Paragraph 4 and/or 6 of the Decision who conducted the supervision.
- (6) The LP may submit comments on the submitted minutes within 15 days from the date of receipt thereof.
- (7) By way of exception to Paragraph 6 of this Article, the Agency may, at the request of the LP, extend the deadline for submitting comments on the minutes, but only in cases where the findings from the minutes relate to the competence of the LP management board.
- (8) If the LP fails to submit comments on the minutes within the stipulated deadlines or fails to reasonably dispute the findings from the minutes that establish irregularities and non-compliance in its operations, the Agency shall impose an appropriate measure on the LP as stipulated by the Law and the Decision.

Supplement to the minutes on conducted on-site supervision

Article 9

- (1) In the event that the review of the LP comments on the minutes determines that the comments are justified, the Agency shall prepare a supplement to the minutes.
- (2) The supplement to the minutes shall be submitted no later than 15 working days from the date of receipt of the comments.
- (3) In the event that the review of the LP comments on the minutes determines that the comments on the minutes are not justified or that they are justified in part, the Agency shall issue a conclusion.
- (4) The LP shall not have the right to file a separate appeal against the Agency's conclusion referred to in Paragraph 3 of this Article.

Suspension and termination of the on-site supervision procedure

Article 10

- (1) The Agency shall suspend the on-site supervision procedure if no irregularities or non-compliances are identified in an individual on-site supervision procedure, which shall be stated in the minutes on the on-site supervision, and shall prepare the minutes and a conclusion on the suspension of the procedure.
- (2) If, during the on-site supervision procedure, the LP prevents the supervision from being carried out in accordance with Article 6 of the Decision, the Agency shall terminate the supervision procedure, prepare the minutes and adopt a conclusion on the termination of the procedure.
- (3) It shall be considered that the LP failed to enable the Agency to conduct supervision and failed to cooperate with the authorized persons of the Agency if it failed to act in accordance with Article 6 of the Decision, as well as in the following cases:
 - 1) if it failed to submit all the requested data and evidence within the specified time limit, and in particular the data that the LP is obliged to have at its disposal according to the Law, by-laws and/or other relevant regulations and/or standards of prudent business, professional rules and good business practice,
 - 2) if it intentionally or through gross negligence submits data that is incorrect or incomplete.
- (4) When it is determined during on-site supervision that there is a previous issue without the resolution of which the relevant matter cannot be resolved, and that issue constitutes an independent legal entity whose discussion is not within the competence of the Agency, the procedure shall be suspended until the competent authority resolves the disputed issue.
- (5) The Agency shall prepare the minutes and adopt the conclusion on the termination of the supervision procedure, but only in relation to the disputed issue referred to in Paragraph 4 of this Article, while in relation to the issue of the supervision subject, it shall continue to carry out supervision without adopting a separate act.
- (6) The conclusion referred to in Paragraphs 1, 2 and 5 of this Article shall be submitted to the LP, which may file an appeal with the Director of the Agency within 15 days from the date of submission of the conclusion.

3. Supervisory measures

Types and measures of supervision

Article 11

- (1) If the Agency determines that the LP has acted contrary to the provisions of the Law, the regulations of the Agency, other relevant regulations or prudential standards, professional rules and good business practices, the Agency may undertake one or more supervisory measures against the LP in accordance with the Law.

(2) If the Agency assesses that there have been serious violations of regulations and business principles that threaten or may threaten the financial condition or liquidity of the LP, the Agency may order the LP to undertake other measures to eliminate irregularities and non-compliance, as follows:

- 1) order the LP to develop and implement an activity plan to align its operations with regulations and set a deadline for its implementation,
 - 2) require the management and governing bodies to analyze the condition, determine measures to resolve identified problems, and to develop and implement an activity plan to resolve those issues and set deadlines for its implementation,
 - 3) order the LP to implement a reduction, or rather a limitation, of exposure based on the conclusion of new leasing contracts, improve the procedure for collecting due receivables, and properly value balance sheet and off-balance sheet items,
 - 4) order the LP to establish or improve: the risk management system and process, an independent internal control system, an internal audit function, an accounting and information system, all depending on the size and financial condition of the LP,
 - 5) order the LP to close one or more organizational units, or suspend the expansion of the business network,
 - 6) order the LP to use the audited net profit to increase capital,
 - 7) order the LP to meet special requirements regarding the maintenance of liquidity if the Agency assesses that it is jeopardized or may deteriorate in the coming period,
 - 8) order the LP to report to the Agency more frequently or additionally on individual indicators of its operations.
- (3) If an organizational unit of a LP with its registered office in the FBiH or the Brčko District of BiH, when carrying out leasing operations on the territory of Republika Srpska, acts contrary to the provisions of the Law and the regulations of the Agency, the Agency shall impose an appropriate supervision measure on that organizational unit of the LP or revoke the consent to carry out leasing operations on the territory of Republika Srpska.
- (4) Supervisory measures shall be ordered by a ruling of the Agency, which shall be submitted to the LP after the expiry of the deadline for submitting comments on the minutes of the supervision conducted, or after the Agency has responded to the LP comments on the minutes of the supervision conducted in accordance with the Decision.

Agency's discretion

Article 12

(1) The Agency shall adopt a ruling on the measure or measures to be taken by the Agency against the LP based on its discretionary assessment, taking into account the following criteria:

- 1) the severity of the identified irregularities and non-compliance,

2) the demonstrated willingness and ability of the LP bodies to eliminate the identified irregularities and non-compliance.

(2) Irregularities and non-compliance in the LP operations, within the meaning of the Decision, shall mean the LP operations contrary to the Law, other relevant legal regulations and general acts, and special regulatory requirements of the Agency.

(3) In the event of identified irregularities and non-compliance in the LP operations, when undertaking measures, the significance of the identified irregularities and non-compliance shall be taken into account, which shall be assessed in particular in relation to:

- 1) the LP financial position,
- 2) the exposure of LP to certain types of risk (credit, operational, reputational, liquidity risk, etc.),
- 3) the impact of the committed irregularity and non-compliance on the future financial and reputational position of the LP,
- 4) the number and interconnectedness of the identified irregularities and non-compliance,
- 5) the duration and frequency of the committed irregularities and non-compliance, and
- 6) the legality of the LP operations.

(4) When assessing the demonstrated readiness and ability of the LP bodies to eliminate identified irregularities and non-compliances, the following shall be assessed in particular:

- 1) the ability of the management and governing bodies to identify, evaluate and monitor risks from the LP operations and to manage those risks,
- 2) the effectiveness of the established internal control system,
- 3) the activities undertaken and their effectiveness in eliminating identified irregularities and non-compliances, especially in implementing previously imposed measures, and
- 4) the degree of cooperation of the management and governing bodies and other LP employees with the Agency, i.e. with authorized persons during supervision.

Written warning issued to LP

Article 13

(1) If, in the course of supervision, the Agency identifies weaknesses and deficiencies in operations that do not constitute a violation of regulations or significantly affect the financial situation, but could have such an impact if they are not eliminated in a timely manner, the Agency may issue a written warning to the LP to undertake certain actions and procedures to improve operations.

(2) A written warning to the LP shall:

- 1) indicate the identified weaknesses, deficiencies or inconsistencies in operations,
- 2) set a deadline and method of acting of the LP to eliminate the weaknesses or deficiencies in the LP operations, and

3) set a deadline, i.e. the dynamics according to which the LP shall report to the Agency on the fulfillment of obligations under the written warning.

(3) The Agency shall monitor whether the LP has eliminated the identified weaknesses or deficiencies after the expiry of the deadline set out in Paragraph 2, Item 3) of this Article or before the expiry of this deadline after receiving a written report from the LP with relevant documentation that the weaknesses or deficiencies have been eliminated.

(4) If the LP fails to fulfil the obligations under the written warning within the deadline and in the manner specified in the written warning, the Agency may undertake one or more supervisory measures against the LP under Article 11 of the Decision, in accordance with the criteria set out in Article 12 of the Decision.

Ruling containing measures

Article 14

(1) If the Agency, while supervising the LP operations, identifies irregularities and non-compliance, it shall issue a ruling imposing measures to eliminate the identified irregularities and non-compliance.

(2) The ruling referred to in Paragraph 1 of this Article shall determine the deadline and manner in which the LP shall eliminate the identified irregularities and non-compliance, as well as the deadline for submitting to the Agency a report with relevant documentation on the activities carried out, as evidence of the implementation of the measures imposed.

(3) The ruling referred to in Paragraph 1 of this Article shall be submitted to the director of the LP, who shall be obliged to inform the members of the LP management board and other responsible persons of the LP of the content of the ruling without delay.

(4) The LP shall be obliged to submit to the Agency a written report with relevant documentation on the implementation of the measures in the manner and within the deadlines ordered by the ruling referred to in Paragraph 1 of this Article.

(5) The Agency shall supervise the implementation of the orders from the ruling after the expiry of the deadlines for their implementation or before the expiry of the deadlines, i.e. after receiving the written report from Paragraph 4 of this Article as evidence that the orders have been implemented.

(6) The Agency shall conduct the procedure for supervising the implementation of the orders and measures ordered by the ruling referred to in Paragraph 1 of this Article in accordance with the Law and the Decision.

4. Administrative and misdemeanor proceedings

Administrative proceedings

Article 15

(1) Pursuant to the facts established in the procedure and the minutes prepared, the Agency shall issue a ruling on the matter that is the subject of the procedure.

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

Issuing a misdemeanor warrant and filing a request to initiate misdemeanor proceedings

Article 16

In addition to imposing supervisory measures in accordance with the Decision, the Agency may issue a misdemeanor order or file a request to initiate misdemeanor proceedings in accordance with the regulations governing misdemeanor proceedings, if it determines that the LP has acted contrary to the provisions of the Law or the provisions of other relevant laws.

5. Transitional and final provisions

Article 17

(1) The Decision shall enter into force on the eighth day from the date of its publication in the “Official Gazette of Republika Srpska”.

(2) On the date of entry into force of the Decision, the Decision on control and supervision of a leasing provider (“Official Gazette of Republika Srpska” No. 100/07 and 104/15) shall cease to be valid.

(3) All supervision procedures that were initiated before the entry into force of the Decision shall be completed in accordance with the provisions of the Decision referred to in Paragraph 2 of this Article.

Number: UO-56/24

Date: 22 February 2024

PRESIDENT OF THE
MANAGEMENT
BOARD
Dejan Kusturić