

Pursuant to Article 227, Paragraph 5 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”, issues 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”, issue No.: 63/17), the Management Board of the Banking Agency of Republika Srpska, at its 47<sup>th</sup> session, held on February 26, adopted the following

**DECISION**  
**ON ASSESSMENT OF RESOLVABILITY**  
**OF BANKS AND BANKING GROUPS**

**Subject of Decision**

**Article 1**

- (1) This Decision shall regulate in more detail the elements that shall be taken into account in the course of assessment of resolvability of a bank or a banking group.
- (2) This Decision shall apply to banks with headquarters in Republika Srpska to which the Banking Agency of Republika Srpska (hereinafter: Agency) has issued a banking license, and a banking group which is subject to supervision of the Agency on consolidated basis.

**Resolvability**

**Article 2**

- (1) Resolvability of a bank or a banking group shall be present if the following conditions are met cumulatively:
  - 1) it is possible to implement over a bank the liquidation, i.e. bankruptcy proceedings or resolution proceedings,
  - 2) implementation of any of those proceedings, to the extent possible, shall not lead to the onset of significant negative consequences on stability of the financial sector,
  - 3) by implementing any of those proceedings it would be possible to ensure continuity of performance of critical functions of the bank, and
  - 4) implementation of resolution is possible without using extraordinary public financial support, but assets for financing resolution may be used in compliance with the Banking Law of Republika Srpska (hereinafter: Law) and the regulation in which the purpose and the manner of using assets for financing resolution are regulated.
- (2) In the course of assessment of resolvability of a bank or a banking group, the Agency shall take into account, especially:
  - 1) possibility of realization of objectives of resolution by applying available resolution instruments,
  - 2) consequences of bank resolution on financial sector stability, the real sector, and the confidence of citizens in the banking system, as well as whether the application of

- resolution instruments would prevent the spread of negative consequences of the bank being unable to do business on the banking system,
- 3) consequences of bank resolution on creditors, depositors, contractual parties, and employees,
  - 4) consequences of bank resolution on unimpeded functioning of the payments system transactions and securities settlement system,
  - 5) ability of the bank to ensure continuity of performance of critical functions and core business lines,
  - 6) level of compliance of legal and organizational structure with critical functions and core business lines that are being performed in the bank,
  - 7) ability of the bank to ensure, in compliance with already concluded operations and possibilities, the minimum staff related and infrastructural capacities, as well as the financing, liquidity and capital that are sufficient to maintain critical functions and core business lines,
  - 8) separation of core business lines from other activities of the bank,
  - 9) applicability of procedures and measures for risk management,
  - 10) amount and type of eligible liabilities to which write off or conversion may be applied in the application of the bail in resolution instrument, and
  - 11) adequacy of risk management in the information management system in connection with ensuring access to information and data necessary for implementation of resolution proceedings.

### **Resolvability Assessment Phases**

#### **Article 3**

- (1) The Agency shall perform the assessment of resolvability through the following successive phases:
  - 1) assessment of justifiability and possibility of performing liquidation or bankruptcy of the bank or the banking group in compliance with the regular procedure defined under legislated regulations that regulate the implementation of those proceedings and in the manner defined by Article 4 of this Decision,
  - 2) selection of the preferred resolution strategy which the Agency shall assess in compliance with Article 5 of this Decision,
  - 3) assessment of the possibility of performance of the preferred resolution strategy in compliance with Articles 6 - 11 of this Decision,
  - 4) assessment of adequacy of the of the preferred resolution strategy in compliance with Article 12 of this Decision.
- (2) When the Agency is of the opinion that the liquidation or bankruptcy of banks and banking groups would have a similar negative impact on financial sector stability, it may implement the assessment of justifiability and possibility of implementation of liquidation or bankruptcy of those banks or banking groups in a similar or identical manner.
- (3) When the Agency concludes that it would not be possible to implement liquidation or bankruptcy proceedings of a bank or a banking group of that their resolution is in public interest, it shall perform the selection of the preferred resolution strategy of a bank or a banking group on the basis of information provided by the bank or the banking group.

When necessary, the Agency shall define alternative variants of the strategy for the cases in which it is proven that the preferred strategy is not adequate or that it is not possible to implement it.

- (4) The assessment of adequacy and possibility of implementation of the preferred resolution strategy of the bank or the banking group referred to in Paragraph 3 of this Article should also include the assessment of all alternative variants of the strategy identified.
- (5) The Agency shall request from the bank to submit additional data and information for the requirements of assessment of the preferred resolution strategy and its alternative variants.
- (6) Data and information for the requirements of assessing the preferred resolution strategy of a banking group and its alternative variants referred to in Paragraph 5 of this Article shall be submitted to the Agency by the superior bank in the banking group which is subject to supervision of the Agency on consolidated basis, and in case of a banking group with a superior holding, i.e. superior parent company, those data and information shall be submitted by the bank with headquarters in Republika Srpska that is under control of that holding or company.
- (7) When it deems as necessary, the Agency shall revise the preferred resolution strategy of the bank or the banking group, or take into account alternative variants of that strategy, and on the basis of assessment of adequacy and possibility of implementation of the preferred resolution strategy referred to in paragraph 4 of this Article.
- (8) When the Agency revises the resolution strategy of a bank or a banking group, it shall be obliged to perform the assessment of its adequacy and possibility of implementation.

**Assessment of Justifiability and Possibility  
of Implementation of Liquidation or Bankruptcy Proceedings of a Bank  
Article 4**

- (1) The Agency shall assess the justifiability and possibility of implementation of liquidation or bankruptcy proceedings of a bank or a banking group in compliance with the regular procedure defined in legislated regulations that regulate the implementation of those proceedings.
- (2) When assessing justifiability of liquidation or bankruptcy proceedings, the Agency shall take into account their impact on the stability of the financial sector, with the objective of ensuring the continuity of access to critical functions that are being performed by the bank or the banking group, and the realization of objectives of resolution. Therein the Agency shall take into account the activities, services, or operations being performed or provided by the bank or the banking group, and assess whether liquidation or bankruptcy proceedings would have a significant adverse effect on any the following:
  - 1) functioning of the financial market and impact on the confidence in that market,
  - 2) financial market infrastructure, and especially the following:
    1. whether an unexpected interruption of activity would lead to the limitation of normal functioning of financial market infrastructure in a manner that would have an adverse effect on the financial sector in its entirety, and

2. whether and to which extent the financial market infrastructure could serve as channels for the spread of adverse effects in liquidation or bankruptcy proceedings,
  - 3) other banks and other entities in the financial sector, and especially the following:
    1. whether liquidation or bankruptcy of a bank or a banking group would lead to an increase in the costs of funding sources or a reduction in accessibility of funding sources for other banks and entities in the financial sector in such a manner that it would represent a risk upon financial stability, and
    2. whether there is a risk of direct or indirect spreading of adverse effect on other banks and entities in the financial sector, as well as a risk of worsening of macroeconomic indicators, and
  - 4) the real sector, and especially from the aspect of accessibility of financial services.
- (3) If the Agency assesses that the initiation of liquidation or bankruptcy proceedings is justified, it shall perform assessment of feasibility of implementation of those procedures. Therein the Agency shall consider whether the information systems of the bank or the banking group are able to generate information being required by the Bosnia and Herzegovina Deposit Insurance Agency for the requirements of payment of insured deposits, including the classification of balances on deposit accounts to the insured and uninsured portion. If relevant, the Agency shall also consider whether it is possible to generate information being required by the authority in charge of deposit insurance in another country.

### **Selection of Preferred Resolution Strategy**

#### **Article 5**

- (1) The Agency shall assess whether the preferred resolution strategy is adequate for achieving the objectives of resolution, taking into account the structure and the business model of the bank or the banking group, and resolution regimes that are applicable to legal persons in the banking group. It shall be deemed that the application of available resolution instruments is of public interest if it is necessary for achieving one or more objectives of resolution, and performance of liquidation or bankruptcy proceedings would not meet those objectives to the same extent.
- (2) When performing the assessment referred to in Paragraph 1, the Agency shall take under consideration the following, at the minimum:
  - 1) which resolution instruments would be used in compliance with the resolution strategy and whether they are accessible to the legal persons covered under that strategy,
  - 2) contractual or other arrangements established with the objective of transferring losses between legal persons within the banking group, including arrangements established with legal persons that do not belong to the banking group, but belong to the same group of companies (including the superior parent company of that group),
  - 3) possibility of performance of resolution instruments that are envisaged under the strategy, and especially in other countries,
  - 4) whether the resolution strategy requires undertaking measures by other competent authorities, and especially from other countries, or whether it is required of those authorities not to independently undertake any measures relating to resolution, and

whether the competent authorities are of the opinion that those measures are feasible and adequate.

- (3) The Agency shall also consider whether alternative variants of resolution strategy are necessary for the resolution of scenarios or circumstances in which the preferred strategy cannot be implemented in an adequate manner. Therein the Agency shall, for each alternative variant of the strategy, consider the probability of its achieving the objectives of resolution and of ensuring the continuity of critical functions.
- (4) Measures for removing obstacles for resolution on the basis of alternative variants of the resolution strategy shall be implemented in compliance with Article 228 of the Law only if they do not prevent the preferred strategy from being implemented in an adequate manner.

### **Assessment of Possibility of Implementation of Preferred Resolution Strategy**

#### **Article 6**

- (1) The Agency shall assess whether it is possible to implement the preferred resolution strategy in an adequate manner and within a specified period and shall identify potential obstacles for its efficient implementation.
- (2) The Agency shall consider the obstacles for short-term stabilization of the bank or the banking group.
- (3) The Agency shall also take under consideration all obstacles that can be predicted for reorganization of business activities which is required in compliance with Article 254 of the Law on Banks or which would probably be required if the resolution strategy envisages the establishment of long-term sustainability of the entire bank or banking group or of its part.
- (4) Obstacles shall be classified into the following categories, at the minimum:
  - 1) structure and business operations,
  - 2) financial resources,
  - 3) information,
  - 4) cross border issues, and
  - 5) legal issues.

### **Assessment of Possibility of Implementation – Structure and Business Operations**

#### **Article 7**

The Agency shall assess the following issues, at the minimum, when assessing whether there are potential obstacles to resolution relating to structure and business operations of the bank or the banking group:

- 1) to which extent can the bank allocate core business lines and critical functions to legal persons within the group,
- 2) to which extent are legal and organizational structure harmonized with core business lines and critical functions,
- 3) to which extent are there arrangements that ensure necessary staff, infrastructure, financing, liquidity and capital for support to core business lines and critical functions,
- 4) to which extent are the contracts for service provision fully implementable in case of bank resolution,

- 5) to which extent is the managerial structure of the bank adequate for management and ensuring compliance with internal policies of the bank in relation with its service level agreements (SLA),
- 6) to which extent does the bank have a procedure for the transfer of services it is providing in compliance with the service level agreement to third parties in case of allocation of critical functions or core business lines,
- 7) to which extent are there contingency plans and measures that ensure access to payment systems and settlement systems,
- 8) to which extent does the legal structure of the banking group prevent the application of resolution instruments because of the number of legal persons, complexity of banking group structure, or difficulties in harmonization of business activities of legal persons,
- 9) existence and sustainability of service level agreements,
- 10) dependence of significant entities and core business lines on infrastructure, information technologies, treasury or finance, employees or other shared critical services,
- 11) whether the systems of management, including the system of internal controls and the risk management system are consistent with planned changes in the business structure of the bank or the banking group,
- 12) whether the legal and organizational structure of the bank or the banking group is consistent with planned changes in the business structure of the bank or the banking group,
- 13) whether adequate resolution instruments, envisaged under the resolution strategy, are accessible for all legal entities.

### **Assessment of Possibility of Implementation – Funding Sources**

#### **Article 8**

The Agency shall assess the following issues, at the minimum, when assessing whether there are any potential obstacles to resolution relating to funding sources:

- 1) if inter group guarantees are being used, to which extent are those guarantees issued under market conditions, and to which extent are the risk management systems relating to those guarantees adequate,
- 2) if the banking group performs back to back transactions, to which extent are those transactions contracted under market terms, and to which extent are the risk management systems relating to those transactions adequate,
- 3) to which extent does the use of guarantees within the group (including cross border guarantees) or back to back transactions, increase the possibility of spreading of risk within the banking group, as well as the group of companies to which the bank belongs,
- 4) amount and type of eligible liabilities of the bank,
- 5) the necessity of determination and quantification of all liabilities for which, in compliance with the preferred resolution strategy, it is probable that they would not contribute to the coverage of losses or recapitalization, taking into account the following factors, at the minimum:
  1. maturity,
  2. rank in payment rankings,

3. types of equity instruments or transferability of the instrument,
  4. legal obstacles for the coverage of losses, such as the failure to recognize resolution instruments under the other country's law, or existence of the right of netting of assets and liabilities,
  5. other factors that cause a risk of it not being possible to use the liabilities for covering the losses, and
  6. the amount of qualified eligible liabilities or other liabilities that may be used for coverage of losses, and legal persons that had issued those instruments.
- 6) the amount of requirements for funding before and in the course of resolution, accessibility of funding sources, and obstacles for transferring the resource funds within the bank or the banking group,
  - 7) whether adequate arrangements have been detailed for the transfer of losses from other members of the banking group to legal persons to which resolution instruments apply, including, if necessary, assessment of the amount of inter banking group funding and its capacities for loss coverage.

### **Assessment of Possibility of Implementation - Information**

#### **Article 9**

The Agency shall consider the following issues, at the minimum, when assessing whether there are any potential obstacles to resolution relating to information:

- 1) the adequacy of information systems, from the aspect of the possibility of the Agency being, with the objective of fast decision making, able to collect accurate and complete information relating to core business lines and critical functions,
- 2) capability of information systems to provide necessary information for efficient resolution of the bank at any moment in time, even in fast changing conditions,
- 3) to which extent can the bank or the banking group ensure continuity of their information systems, both for the bank and for the new bank, in case of the critical functions and core business lines being separated from the remainder of business activities,
- 4) to which extent have the bank or the banking group established adequate procedures that facilitate the provision of information to the Agency on determination of depositors and the amount of insured deposits, and
- 5) capability of the bank or the banking group to submit information necessary for assessment and determination of the amount of required write down or recapitalization.

### **Assessment of Possibility of Implementation - Cross Border Issues**

#### **Article 10**

The Agency shall consider the following issues, at the minimum, when assessing whether there are any potential obstacles to resolution relating to cross border issues:

- 1) whether the other competent institutions have resolution instruments necessary for support the activities being implemented by the Agency in the process of resolution,

and the existence of adequate procedures for coordination of activities between competent institutions, and

- 2) existence of adequate procedures of coordination and communication, as well as harmonization of measures that shall be undertaken by the Agency and by other competent institutions, with the objective of facilitation of implementation of the resolution strategy.

### **Assessment of Possibility of Implementation – Legal Issues**

#### **Article 11**

When assessing the possible obstacles to resolution the following legal issues shall be taken into account:

- 1) whether it is possible to meet, in a timely manner, the requirements for receiving approvals and consents that are necessary for implementation of the resolution strategy,
- 2) whether a significant portion of contractual relations could be terminated on the occasion of initiation of resolution procedure, and
- 3) whether the contractual obligations that the Agency cannot abolish prohibit the transfer of assets and/or liabilities envisaged under the resolution strategy.

### **Assessment of Adequacy of Resolution Strategy**

#### **Article 12**

- (1) Following the assessment of possibility of implementation of the preferred resolution strategy, the Agency shall assess its adequacy. When assessing, one shall take under consideration the potential impact of the resolution of the bank on the financial sector and the real sector, which the objective of ensuring the continuity of critical functions that the bank or the banking group is performing.
- (2) Assessment of adequacy of resolution strategy shall cover the following:
  - 1) feasibility of the use of resolution instruments in a manner that achieves the objectives of resolution, taking into account available instruments and the bank structure,
  - 2) to which extent does the structure of the banking group allow the Agency resolution of an entire group or any of its entities or more of them, without it creating a significant direct and indirect adverse effect on the financial sector, confidence in that sector or the real sector, with the objective of maximum increases in the value of the group as a whole,
  - 3) programmes and methods for facilitating resolution in case of banking groups that have subordinated companies in areas of different competencies,
  - 4) probability of the use of resolution instruments in a manner that achieves the objectives of resolution, taking into account the potential effect on creditors, contractual parties, clients, and employees, as well as possible measures of competent institutions for resolution in other countries,
  - 5) to which extent can the impact of resolution of the bank on the financial sector and on confidence in that sector be appropriately evaluated,

- 6) to which extent could the resolution of the bank have a significant direct or indirect adverse effect on the financial sector, confidence in that sector or the real sector,
  - 7) to which extent the spread of adverse effect on other banks or other entities in the financial sector could be prevented by applying resolution instruments and authorization for resolution, and
  - 8) to which extent could bank resolution have a significant effect on the functioning of payment systems and settlement systems.
- (3) When assessing, the Agency shall take into account the potential impact of implementation of the resolution strategy on the financial sector. Therein, the Agency shall take under consideration the functions that are being performed by the bank or the group and assess whether the implementation of the resolution strategy would have a significant adverse effect on any of the elements referred to in Article 4, Paragraph 2, Items 1 - 4 of this Decision.

### **Transitional and Final Provisions**

#### **Article 13**

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

No: UO-374/18

Date: February 26, 2018

PRESIDENT OF  
THE MANAGEMENT BOARD  
Mira Bjelac