

Pursuant to Article 187, paragraph (8), Article 204, paragraph (9) and Article 248 of the Banking Law (Official Gazette of the Federation of BiH, No. 27/17), Article 5, paragraph (1), item h) and Article 19, paragraph (1), item c) of the Law on Banking Agency of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, No. 75/17), and Article 12, paragraph (1), item d) of the Statute of the Banking Agency of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, No. 03/18), the Management Board of the Banking Agency of the Federation of Bosnia and Herzegovina, at its session held on 29 March 2018, adopted the following

## **DECISION ON PROCEDURE AND MANNER OF PERFORMING WRITE DOWN OR CONVERSION OF CAPITAL INSTRUMENTS AND LIABILITIES OF A BANK**

### **I. GENERAL PROVISIONS**

#### Article 1

##### Subject of decision

This Decision lays down the conditions for the write down or conversion of capital instruments, the procedure and the manner for conversion or write down of liabilities of the bank under resolution, as well as the conditions for using means of financing ensured for the resolution.

#### Article 2

##### Subjects of application

This Decision shall apply to:

- a) banks with headquarters in the Federation of Bosnia and Herzegovina to which the Banking Agency of the Federation of Bosnia and Herzegovina (hereinafter: the Agency) issued their banking licence, and
- b) the banking group that is subject to control of the Agency on consolidated basis.

#### Article 3

##### Terms

Individual terms used in this Decision shall have the following meanings:

- a) “**resolution**” means the application of resolution tools in order to achieve at least one of the resolution objectives;
- b) “**recovery capacity**” means the capability of a bank to restore its financial position following a significant deterioration;
- c) “**eligible liabilities**” means the liabilities to which the bail-in instrument can be applied.

(2) The terms not defined under paragraph (1) of this Article, and used in this Decision, shall have meanings in compliance with the provisions of the Banking Law (hereinafter: the Law).

### **II. WRITE DOWN OR CONVERSION OF CAPITAL INSTRUMENTS**

#### Article 4

##### Requirement for write down or conversion of capital instruments

- (1) The Agency may apply the write down or conversion of relevant capital instruments into Common Equity Tier 1, where it identifies the presence of one or more circumstances referred to in Article 186 (3) of the Law.
- (2) In accordance with paragraph (1) of this Article, the Agency may perform write down or conversion the capital into shares or other instruments of ownership of the bank:
  - a) independently from the resolution actions;
  - b) in combination with resolution action, where the conditions for resolution of the bank are met
- (3) In terms of Article 1 of this Decision, and in conjunction with Article 186 (3) (b) of the Law, it is considered that the bank cannot continue to carry out its operations unless a write down or conversion of capital instruments were performed, if the conditions specified in Article 188, paragraph (3) of the Law are met.

#### Article 5

##### Implementation of write down or conversion of capital instruments

Prior to implementation of write down or conversion of capital instruments and in compliance with Article 187 of the Law, the Agency shall carry out the assessment of value of assets and liabilities of the bank in compliance with Article 189 of the Law and the Decision on conditions and manner of performing independent valuation of assets and liabilities of the bank before and during bank resolution proceedings.

- (1) If the write down, i.e. reduction of principal amount of relevant capital instruments is being performed in compliance with Article 187 of the Law, that reduction shall have the following effects:
  - a) the reduction shall be permanent, with potential increase in the value in compliance with the mechanism of compensation in compliance with the Law and provisions of this Decision,
  - b) the owner of the relevant capital instrument shall have no rights on the basis of the portion of value of the instrument which was reduced or converted, except:
    1. the right to interest and other receivables on the grounds of that instrument calculated as of the date of the reduction of value of conversion of the relevant capital instrument;
    2. the owner of the relevant capital instrument shall have no rights on the basis of the portion of value of the instrument which was reduced or converted, except for the already calculated liabilities in connection with remuneration of damages that may occur because of the legal remedy that refutes the legality of execution of authorities for write off
    3. no compensation shall be paid to any of the holders of relevant capital instruments apart from the one that is in compliance with Article 187 paragraph (3) of the Law.
- (5) The Agency may order to the bank to issue new instruments of Common Equity Tier 1 to owners of relevant capital instruments whose value was reduced with the objective of conversion of those instruments pursuant with Article 187, paragraph (3) of the Law.
- (6) Relevant capital instruments may be converted into instruments of Common Equity Tier 1 only if the following conditions are met:

- a) those instruments of Common Equity Tier 1 are issued by the bank pending prior approval of the Agency;
  - b) those instruments of Common Equity Tier 1 are issued before that bank issues shares or other ownership instruments for the implementation of assets of extraordinary public financial support by investing in regulatory capital;
  - c) those instruments of Common Equity Tier 1 shall be awarded and transferred free without delay after the execution of authorities for write down or conversion of relevant capital instruments,
  - d) the rate of conversion which determines the number of instruments of Common Equity Tier 1 which shall be awarded for each relevant capital instrument is in compliance with the principles that apply concerning the rate of conversion into equity capital.
- (7) For the purpose of securing the instruments of Common Equity Tier 1 in compliance with this Article, the Agency may order to the bank to acquire all necessary prior approvals for the issuance of the necessary number of instruments of Common Equity Tier 1.

### **III. APPLICATION OF THE BAIL-IN TOOL**

#### Article 6

##### Bail-in

- (1) If the decision on resolution stipulates that bail-in tool is to be applied with the objective of achieving resolution objectives and principles, the Agency shall stipulate in that decision that it is to be implemented through:
- a) an increase of regulatory capital of the bank, to the extent to which the bank is again satisfy the conditions required for operations and continued business in compliance with the Law and sustain confidence of the financial market in the bank;
  - b) conversion of liabilities and debt instruments into shares or other ownership instruments or reduction in the principal of liabilities and debt instruments which shall be transferred:
    - 1) to the bridge bank with the objective of securing the capital of the bridge bank
    - 2) by applying the sale of business instrument or the assets transfer and separation tool.
- (2) The decision referred to in paragraph (1) item a) of this Article shall be adopted by the Agency if there is a realistic possibility that the application of bail-in tool, along with other measures, including the measures implemented in compliance with the plan for business reorganisation, the bank under resolution would again become financially stable and maintain regular business operations in long-term.
- (3) The Agency may apply the bail-in tool independently or in combination with other resolution tools referred to in Article 197 of the Law.

#### Article 7

##### Principles of application

- (1) When applying the bail-in tool the Agency shall, exercise its powers in compliance with general principles of resolution, wherein special care shall be taken of the following principles:
- a) shareholders of the bank under resolution shall be the first to suffer the losses;

- b) creditors of the bank under resolution shall suffer losses after the shareholders in compliance with the priority level of their claims in compliance with the law that regulates bankruptcy proceedings;
  - c) creditors that in case of bankruptcy enter into the priority level shall be treated in equal manner;
  - d) creditors or shareholders shall not suffer losses greater than those they would have suffered if bankruptcy proceedings were initiated over the bank under resolution.
- (2) When applying bail-in tools the Agency shall, when determining the rate of conversion or authority for write down or conversion of relevant capital instruments, assess whether due attention has been paid to the protection of the right of ownership in compliance with other legislated regulations that are not in conflict with the provisions of the Law.

#### **IV. FIELD OF APPLICATION THE BAIL-IN**

##### Article 8

##### Eligible liabilities

- (1) The bail-in tool shall apply to all liabilities of the bank under resolution that are not excluded from application in compliance with paragraph (2) of this Article and Article 9 of this Decision-
- (2) Eligible liabilities shall not include:
  - a) liabilities based on insured deposits, up to the amount insured in compliance with the regulation that regulates deposit insurance in banks;
  - b) liabilities whose realisation is secured with right of lien, means of financial security, or another similar right, including repo deals, covered bonds or liabilities from financial instruments that are being used for protection from risk and comprise an integral part of assets for coverage and that are secured in a manner similar to covered bonds;
  - c) liabilities incurred due to the management of assets and cash of clients, including assets or cash of clients that the bank under resolution is keeping on behalf of investment and pension funds, if those funds are, under a special law, excluded from the liquidation or bankruptcy estate;
  - d) liabilities towards banks in Bosnia and Herzegovina and foreign banks and investment funds, excluding members of the same group, whose initial maturity is shorter than seven days;
  - e) liabilities with the remaining maturity shorter than seven days towards systems for settlement of securities, i.e. operators of those systems and participants in those systems, which onset on the basis of participation in such systems;
  - f) liabilities towards:
    - 1) employees, on the basis of accrued, but outstanding salaries, contributions for mandatory pension and health insurance or other fixed earnings, apart from variable compensations that are not regulated under the law or collective agreement,
    - 2) creditors, on the basis of sale of goods or provisions of services of the bank under resolution, which are key for daily functioning of this bank, inclusive of information technology services, utility services, and services of lease, servicing and maintenance of premises,

- 3) tax authorities and bodies to which contributions are paid for social insurance, under the condition that those liabilities take precedence in settlement in compliance with the Law and other regulations.
  - 4) Deposit Insurance Agency of Bosnia and Herzegovina on the grounds of the premium for deposit insurance;
- (3) In the course of the application of the bail-in tool, all the secured assets connected with the covered amount of covered bonds shall remain equally separated and in the amount sufficient for the coverage of those bonds.
  - (4) In addition to the provisions under paragraph (2), item b) of this Article and paragraph (3) of this Article, the Agency can apply the internal resolution instrument to the portion of liabilities that exceeds the value of assets, the subject of a pledge, the right of lien, or another means of security with which that liabilities is secured.

## Article 9

### Exclusion or partial exclusion of eligible liabilities

- (1) Notwithstanding Article 8 of this Decision, the Agency may exclude certain eligible liabilities, partially or in full, from the application of bail-in tool, specifically if:
  - a) the value of the liability cannot be, within a reasonable timeframe, reduced or converted, despite of all the actions undertaken by the Agency in good faith;
  - b) the exclusion is necessary with the objective of facilitating the continuity of critical functions and core business lines;
  - c) the exclusion is necessary for the purpose of avoiding the spreading of negative effects on the financial system, especially in regard to deposits that are subject to insurance in compliance with regulations that regulate deposit insurance, and above the level of the insured amount, which would seriously disrupt the functioning of financial markets, including the infrastructure of financial markets, in the manner that could cause severe stress in the economic market of the Federation of Bosnia and Herzegovina or the real sector of Bosnia and Herzegovina,
  - d) the application of the bail-in tool to those liabilities would result in larger losses of other creditors.
- (2) The Agency shall, when making the decision referred to in paragraph (1) of this Article, have to take into account the following:
  - a) the principle that the losses shall first be suffered by the shareholder, followed by the creditor of the bank under resolution according to the priority level of settlement as prescribed under the law that regulates bankruptcy proceedings and liquidation,
  - b) the capacity of the bank under resolution for the coverage of losses it would have in case of exclusion of liabilities,
  - c) the need to ensure adequate means of financing the resolution.
- (3) In case the Agency decides to exclude, partially or in full, an eligible liability, the amount of the reduction of value or conversion which shall apply to other eligible liabilities can be increased by the amount of such exclusions, under the condition that the amount of that reduction in value or conversion that applies to other eligible liabilities was implemented in such a manner that the creditors are not suffering losses larger than those they would have had had liquidation or bankruptcy proceedings been initiated over the bank.

- (4) The Agency can prescribe rules under which it shall regulate the circumstances of exclusion referred to in this Article.

## **V. IMPLEMENTATION OF BAIL-IN**

### Article 10

#### Assessment of amount of bail-in

The Agency shall perform the assessment of the amount of bail-in in compliance with Article 206 of the Law and the Decision on conditions and manner of performing independent valuation of assets and liabilities of the bank before and during bank resolution proceedings.

### Article 11

#### Sequence of write down and conversion

- (1) When applying bail-in the Agency may, in compliance with Article 208 of the Law and provisions of this Decision, perform the write down or conversion as follows:
- a) Common Equity Tier 1 items reduces first in proportion to the write down and conversion of capital instruments to the extent needed and up to their capacity;
  - b) then reduce the principal amount of Additional Tier 1 items to the extent required and to the extent of their capacity and in compliance with the properties of the instrument, if the total reduction in compliance with item a) of this paragraph is lower than the sum of amounts referred to in Article 13, paragraph (2), items b) and c) of this Decision;
  - c) then reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity and in compliance with the properties of the instrument, if the total reduction in compliance with items a) and b) of this paragraph is lower than the sum of amounts referred to in Article 13, paragraph (2), items b) and c) of this Decision;
  - d) then reduce the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital to the extent required and to the extent of their capacity, in accordance with the hierarchy of claims in normal insolvency proceeding, s, in conjunction with the write down pursuant to items a), b) and c) of this paragraph, to produce the sum of the amounts referred to in Article 13, paragraph (2), items b) and c) of this Decision, if the total reduction in compliance with items a), b) and c) of this paragraph is lower than the sum of amounts referred to in Article 13, paragraph (2), items b) and c) of this Decision;
  - e) then reduce the principal or the rest of eligible liabilities in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided in compliance with legislated regulations, except if, in the course of application of bail-in tool, a different sequence of losses coverage was determined, in order for it to, together with the reduction of value in compliance with items a), b), c) and d) of this paragraph reach the sum of the amounts referred to in Article 13, paragraph (2), items b) and c) of this Decision, if the total reduction under items a), b), c) and d) of this paragraph is lower than the sum of amounts referred to in Article 113, paragraph (2), items b) and c) of this Decision.

- (2) The Agency shall, before the implementation of the reduction of value and conversion, allocate the losses referred to in Article 13, paragraph (2), items b) and c) of this Decision, equally between shares or other instruments of ownership and eligible liabilities of the same rank, except where a different allocation results from the application of the bail-in instrument.
- (3) When performing the conversions referred to in paragraph (1) of this Article, the Agency can apply different conversion rates to different categories of shareholders and creditors from that paragraph taking into account that the same rate applies to all the creditors from the same priority rank in compliance with the provisions of this Law that regulate bankruptcy, and that more favourable conversion rate applies to a higher payment rank.
- (4) The Agency shall, before the application of paragraph (1) of this Article reduce value or perform the conversion of the principal amount instruments referred to in paragraph (1), items b), c) and d) of this Article if the instrument contains a provision that envisages the following:
  - a) the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the bank under resolution;
  - b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.
- (5) When the Agency deciding on whether liabilities are to be reduced or converted into equity, one class of liabilities conversion cannot be performed while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not reduced, unless otherwise permitted for exceptional bail-in cases.

#### Article 12 Derivatives

- (1) The Agency shall be empowered to render derivative contract mature and terminate it on the date of issuance the order on opening the resolution
- (2) The Agency shall prescribe principles for valuation of liabilities resulting from derivatives.

### **VI. TREATMENT OF SHAREHOLDERS AND PROTECTIVE MEASURES**

#### Article 13

Treatment of shareholders and creditors in application of bail-in, i.e. write down and conversion of capital instruments

- (1) When applying the bail-in tool the Agency shall treat the shareholders in the manner prescribed under Article 207 of the Law.
- (2) When deciding on application of bail-in tool, and in relation to the treatment of shareholders, the Agency shall consider the following:
  - a) the results of the valuation performed in compliance with the Decision on conditions and manner of performing independent valuation of assets and liabilities of the bank before and after bank resolution proceedings.
  - b) the amount in which, according to assessment, the items of Common Equity Tier 1 have to be reduced and the value of relevant capital instruments to be reduced or those instruments have to be converted in compliance with the requirements for

- write down or conversion of capital and implementation of write down or conversion, and
- c) the total assessed amount in compliance with the assessment of amount of bail-in.

#### Article 14

##### Treatment of shareholders and creditors in case of partial transfers and application of bail-in tool

- (1) If the Agency, when applying one or more resolution instruments, including the bail-in, transfers only a portion of rights, assets and liabilities to the bank under resolution, in accordance to Article 213 of the Law, shall be obliged to ensure that the shareholders and those creditors whose liabilities were not transferred acquire as settlement of their liabilities at least the amount in which they would be settled had, at the time of making the decision on initiation of resolution proceedings, in compliance with Article 190 of the Law, bankruptcy proceedings been implemented over the bank in resolution.
- (2) If the Agency applies the bail-in tool, it shall be under obligation, by applying Article 213 of the Law, to ensure that the shareholders and creditors do not, for the liabilities whose value was reduced and converted into an instrument of Common Equity Tier 1, suffer losses larger than the losses they would have suffered, at the time of making the decision on initiation of resolution proceedings, in compliance with Article 190 of the Law, bankruptcy proceedings been implemented over the bank in resolution.

## **VII. USE OF FUNDS FOR FINANCING RESOLUTION**

#### Article 15

##### Use of sources of financing in case of exclusion or partial exclusion of eligible liabilities

- (1) In case of exemption or partial exemption of eligible liabilities referred to in Article 8 of this Decision, when the losses had not been fully transferred to other creditors, one may, from the sources of financing of resolution pay to the bank under resolution, for the purpose of fulfilment of one or both possibilities:
  - a) of coverage of all the losses that are not fully covered with eligible liabilities and in order for the net value of assets of the bank under resolution to be equal to zero in compliance with Article 206, paragraph (1) item a) of the Law
  - b) purchase of shares or other ownership instruments or other instruments of capital of the bank under resolution for the purpose of recapitalisation of the bank in compliance with Article 206, paragraph (1) item b) of the Law.
- (2) The Agency may use the assets of financing for the purposes referred to in paragraph (1) of this Article only in compliance with Article 214 of the Law.

#### Article 16

##### Use of sources of financing of resolution

- (1) The Agency may use the sources of financing of resolution only at the extent in which it is necessary to ensure effective application of resolution instruments for the following purposes:
  - a) for securing the assets or liabilities of the bank under resolution, its daughter companies, the bridge bank, or asset management company;

- b) for approval of credit / loans to the bank under resolution, its daughter companies, the bridge bank, or asset management company;
  - c) for purchasing the assets of the bank under resolution;
  - d) for the payment of capital and securing additional assets necessary for bridge bank or asset management company;
  - e) for the payment of remuneration of damages to shareholders or creditors in compliance with Article 213 of the Law;
  - f) for compensation to the bank under resolution of the amount resulting from the exemption of eligible liabilities of certain creditors from the application of the bail-in tool in compliance s provisions of this Decision;
  - g) for loaning to other arrangements on voluntary basis;
  - h) for undertaking any combination of measures under items a) to g) of this paragraph.
- (2) Sources of financing may be used for undertaking the measures referred to in paragraph (1) item a) of this Article in relation to buyers when applying the instrument
- (3) Sources of financing of resolution shall not be used directly for compensation of losses or for recapitalisation of the bank under resolution. In case the using of sources of financing of resolution for the needs referred to in paragraphs (1) and (2) of this Article indirectly results in the portion of the losses of the bank under resolution being covered from the sources of financing, the principles shall apply for the use of sources of financing stipulated in Article 204 of the Law.

## **VIII. TRANSITIONAL AND FINAL PROVISIONS**

### Article 17

#### Entry into force

This Decision shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Federation of BiH.

No: U.O.-18-09/18  
Sarajevo, 29 March 2018

Chairwoman  
of the Management Board  
Ljerka Marić, M.Sc, sgd.