

**REPUBLIC OF ALBANIA
BANK OF ALBANIA
SUPERVISORY COUNCIL**

**DECISION
No. 78, dated 16.12.2020**

ON

**APPROVAL OF REGULATION ON " THE MINIMUM REQUIREMENT FOR
REGULATORY CAPITAL INSTRUMENTS AND ELIGIBLE LIABILITIES"**

In accordance with Article 12 (a), Article 43 (c) of the Law No. 8269, dated 23.12. 1997 "On the Bank of Albania", as amended, and Article 32, paragraph 5 and Article 87 of the Law No. 133, dated 22.12.2016 "On the recovery and resolution of banks in the Republic of Albania", having regard to the proposal from Resolution Department, the Supervisory Council of the Bank of Albania

DECIDED:

1. To adopt the Regulation on "The minimum requirement for regulatory capital instruments and eligible liabilities", as provided therein.
2. The Regulation on "The minimum requirement for regulatory capital instruments and eligible liabilities" shall enter into force on 30 October 2021.
3. The Resolution Department, the Supervision Department and the Department of Financial Statistics at the Bank of Albania shall be responsible for the implementation of this Decision.
4. The Governor's Office and the Research Department shall be responsible for the publication of this Decision in the Official Journal of the Republic of Albania and in the Official Bulletin of the Bank of Albania, respectively.

SECRETARY
Elvis ÇIBUKU

CHAIR
Gent SEJKO

**REGULATION ON
" THE MINIMUM REQUIREMENT FOR REGULATORY CAPITAL
INSTRUMENTS AND ELIGIBLE LIABILITIES"**

**CHAPTER I
General Provisions**

**Article 1
Subject matter**

This Regulation lays down the minimum requirement for regulatory capital instruments and eligible liabilities for each bank.

**Article 2
Scope of application**

This Regulation shall apply on banks and branches of foreign banks, licensed by the Bank of Albania.

**Article 3
Legal ground**

This Regulation is established pursuant to:

- a. Article 43 (c), of the Law No. 8269, dated 23.12.1997, "On the Bank of Albania", as amended;
- b. Article 32, paragraph 5 of the Law No. 133/2016 dated 22.12.2016 "On the recovery and resolution of banks in the Republic of Albania"
- c. Article 87, of the Law No. 133/2016, "On the recovery and resolution of banks in the Republic of Albania".

**Article 4
Definitions**

1. The terms used in this Regulation shall have the same meaning as the terms defined or used in:

- a. Law No. 8269, dated 23.12.1997 "On the Bank of Albania", as amended;
- b. Law No. 9662, dated 18.12.2006 "On Banks in the Republic of Albania", as amended, hereinafter "On Banks";
- c. Law No.133 / 2016, dated 22.12.2016 "On the recovery and resolution of banks in the Republic of Albania", hereinafter Law No. 133/2016;
- d. Law No.62/2020, dated 14.5.2020 "On Capital Markets", hereinafter law "On Capital Markets";
- e. Regulation No. 69, dated 18.12.2014 "On regulatory capital", as amended, hereinafter regulation "On regulatory capital";
- f. Regulation No. 41, dated 5.6.2019, "On Macro-prudential capital buffers", hereinafter regulation "On macriprudential buffer";
- g. Regulation No. 48/2013 "On capital adequacy ratio", as amended, hereinafter regulation "On capital adequacy ratio";
- h. Regulation No. 31/2018 "On Resolution Plans", as amended, hereinafter regulation "On Resolution Plans";

CHAPTER II
MINIMUM REQUIREMENTS FOR REGULATORY CAPITAL INSTRUMENTS
AND ELIGIBLE LIABILITIES

Article 5
General Requirements

1. The Resolution Authority, pursuant to Article 32, point 5 of the Law No. 133/2016, shall determine the minimum requirement for regulatory capital instruments and eligible liabilities for each bank on individual and consolidated basis according to the information submitted to the bank for this purpose.
2. The Resolution Authority shall calculate the minimum requirement for regulatory capital instruments and eligible liabilities for each bank pursuant to Articles 6 and 7 of this Regulation , at least on the basis of the following criteria:
 - a. the need to ensure that the bank can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
 - b. the need to ensure, in appropriate cases, that the bank has sufficient regulatory capital instruments and eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers, respectively, were to be applied, losses could be absorbed ('loss absorption') and that it is possible to restore the total capital ratio ('recapitalisation') to a level necessary to enable it to continue to comply with the conditions for authorization and to continue to carry out the activities for which it is authorized under the Law on banks;
 - c. the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 31(4) of Law No. 133/2016 or to be transferred in full to a recipient under a partial transfer, that the bank has sufficient regulatory capital instruments and other eligible liabilities to absorb losses and to restore its capital ratio to the level necessary to enable it to continue to comply with the conditions for authorization and to continue to carry out the activities for which it is authorized under the Law on banks;
 - d. the size, the business model, the funding model and the risk profile of the bank;
 - e. the extent to which the failure of the bank would have adverse effects on financial stability, including through contagion to other banks, due to the interconnectedness of the bank with other banks or with the rest of the financial system.
3. Where the resolution plan provides that resolution action is to be taken or that the power to write down and conversion shall be exercised pursuant to Article 45 of Law No. 133/2016, the requirement referred to in point 1, Article 32 of Law No. 133/2016, shall equal the sum of:
 - a. the amount of the losses to be absorbed ('loss absorption') in resolution that corresponds to the requirements referred to Article 6 of this Regulation;
 - b. a recapitalisation amount that allows to restore compliance with the requirements for licensing, and to carry on the activities for which they are authorized in accordance with the banking law for an appropriate period of not more than one year, calculated according to the provisions of Article 7 of this Regulation.

4. Where the resolution plan provides that the bank is to be wound up under normal insolvency proceedings the resolution authority shall assess whether the requirement referred to in Article 32(1) of Law No. 133/2016 for that bank, shall not exceed the amount sufficient to absorb losses in accordance with point 3(a) of this Article.
5. Where the resolution plan identifies liabilities that can be partially or fully excluded from the bail-in under Article 31(4) of Law No. 133/2016 or can be transferred to a recipient fully, the Resolution Authority shall require that the minimum requirement set out in this Article be met at a sufficient level of regulatory capital instruments and eligible liabilities for:
 - a. the coverage of the amount of excluded liabilities identified under Article 31(4) of Law No. 133/2016;
 - b. the fulfillment of the conditions set out in point 3 of this Article.
6. The Administrator responsible for the Resolution shall take the decision on the “minimum requirement for regulatory capital instruments and eligible liabilities”. This decision is communicated in writing, according to the provisions of Article 6(d), of the Regulation "On Resolution plans" and shall include:
 - a. calculations according to Articles 6 and 7 of this Regulation;
 - b. the total amount for the “minimum requirement for regulatory capital instruments and eligible liabilities” which is calculated as the sum of the amount defined in Article 6 (2) and the amount defined in Article 7 (4) of this Regulation;
 - c. the ratio of the total amount for the "minimum requirement for regulatory capital instruments and eligible liabilities" expressed as:
 - i. percentage of all liabilities and capital instruments of the bank, according to article 32, point 2 of Law No. 133/2016;
 - ii. percentage of risk weighted exposures, calculated according to Article 6 of Regulation "On the capital adequacy ratio".

Article 6

The necessary amount to ensure loss absorption

1. The Resolution Authority shall determine the loss absorption amount by considering the capital requirements currently applicable to a bank, and in particular the following:
 - a. capital requirements pursuant to the Regulation “On regulatory capital” which include:
 - i. a CET 1 capital ratio of 6.75% of the total risk exposure amount;
 - ii. a Tier 1 capital ratio of 9 % of the total risk exposure amount;
 - iii. a total capital ratio of 12 % of the total risk exposure amount (capital adequacy ratio);
 - b. any requirement for additional capital, as determined by the Supervisory Authority.
2. The Resolution Authority shall determine the loss absorption amount as the sum of the requirements referred to in points (a/iii) and (b) of paragraph 1.

*Loss absorption amount = risk exposure amount * (Capital adequacy ratio (12%) + Combined buffer requirement (%))*

Article 7
The necessary amount of recapitalisation

1. The Resolution Authority shall determine the amount of recapitalisation which would be necessary to implement the preferred resolution strategy, as identified in the resolution plan.
2. The recapitalisation amount shall be at least equal to the amount necessary to satisfy applicable capital requirements necessary to comply with the conditions for authorization after the implementation of the preferred resolution strategy.
3. The capital requirements referred to in paragraph 2 shall consider the following:
 - a. own funds requirements pursuant to the Regulation “On regulatory capital” which include:
 - i. a CET 1 capital ratio of 6.75% of the total risk exposure amount;
 - ii. a Tier 1 capital ratio of 9 % of the total risk exposure amount;
 - iii. a total capital ratio of 12 % of the total risk exposure amount;
 - b. any requirement for additional capital, determined by the Supervisory Authority.
4. The recapitalisation amount to be determined by the Resolution Authority shall be the sum of the requirements referred to in points (a/iii) and (b) of paragraph 3 of this Article.

Necessary amount of recapitalisation = risk exposure amount
** (Capital adequacy ratio (12%) + Combined buffer requirement (%))*

5. In determining the recapitalisation amount, the Resolution Authority:
 - a. shall use the most recent amount of risk-weighted exposures reported for resolution purposes, adjusted for possible changes in this amount by the actions provided in the resolution plan;
 - b. after consulting with the Supervisory Authority regarding the business model, financing model and overall risk profile of the bank, may determine a higher or lower amount of the need for additional regulatory capital instruments requirement that the bank should maintain after the implementation of the preferred strategy of resolution pursuant to paragraph 3 “b”, of this Article.
6. The Resolution Authority may determine a higher amount of additional capital requirements referred to in paragraph 5 "b" of this Article, if considered necessary to maintain market confidence, after the implementation of resolution actions in the bank or the exercise of write down and conversion powers for an appropriate period, up to one year.
7. Where paragraph 6 of this Article applies, the additional amount to maintain market confidence shall be calculated as the difference for combined macroprudential capital buffer as specified in Article 6 of Regulation “On Macro-prudential capital buffers” and the specific countercyclical capital requirement set out in paragraph 6 "a", of Article 11 in that Regulation.
8. The Resolution Authority may determine, in consultation with the Supervisory Authority, a lower amount of any additional amount of regulatory capital instruments requirements, pursuant to paragraph 5 "b" of this Article, when considers that a lower level would be sufficient to sustain sufficient market confidence and to ensure both the continued provision

of critical economic functions by the bank and its access to funding without recourse to extraordinary public financial support other than contributions from Resolution Fund, in particular pursuant to paragraph 1 of article 74 of Law No.133/2016, and the principles governing its use as set in Article 31 (6) of this Law.

CHAPTER III ELIGIBLE LIABILITIES

Article 8 Eligible liabilities items

1. Eligible liabilities shall consist of the following instruments, unless they fall into any of the categories excluded under paragraph 2 of this Article and to the extent that they meet the requirements specified in Article 10 of this Regulation:
 - a. Eligible liabilities instruments where the conditions set out in Article 9 are met, to the extent that they do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 items.
 - b. Tier 2 instruments with a residual maturity of at least one year, to the extent that they do not qualify as Tier 2 items in accordance with Regulation "On regulatory capital".
2. The following liabilities shall be excluded from eligible liabilities items for the purpose of meeting the "minimum requirement for regulatory capital instruments and eligible liabilities":
 - a. the liabilities set out in Article 31 (2) (a) to (f) of Law No. 133/2016;
 - b. current accounts and short-term deposits with an original maturity of less than one year;
 - c. the part of insured deposits of individuals, traders and companies, which exceeds the maximum level of coverage by the deposit insurance scheme, according to article 121, paragraph 1 "ç" of the Law "On banks";
 - d. liabilities arising from debt instruments with derivative characteristics.
3. For the purposes paragraph 2 (d) of this Article, debt instruments containing early redemption options exercisable at the discretion of the issuer or of the holder, and debt instruments with variable interests derived from a broadly used reference rate in the domestic and international market, shall not be considered as debt instruments with derivative characteristics solely because of such features.

Article 9

The qualification of instruments as eligible liabilities for the purposes of meeting the "minimum requirements for regulatory capital instruments and eligible liabilities"

1. The instrument shall qualify as eligible liabilities provided that all of the conditions set out below are met, and those specified in Article 10 are met:
 - a. the instrument is issued by the bank and is fully paid up;
 - b. the instrument was not purchased directly or indirectly and was not funded by any of the following entities:
 - i. bank or entities of the banking group

- ii. entities in which the bank directly owns, or by way of control of 20% or more of the voting rights or their capital.
 - c. for the instruments issued after the entry into force of this Regulation, the claim on the principal is completely subordinated to the requirements arising from the excluded liabilities referred to in paragraph 2(a) to (f) of Article 31 of Law No. 133/2016. The sub-order in this point is considered to be fulfilled if the contractual provisions governing the instrument, specify that in case of forced liquidation, the claim on the principal of the instrument is ranked below the requirements arising from each of the excluded liabilities under paragraph 2, Article 31 of Law No. 133/2016;
 - d. the instrument is neither subject to the guarantee nor to any other agreement that improves the seniority of claims settlement against the bank's creditors, by any of the following entities:
 - i. the bank or its subsidiaries;
 - ii. the parent bank and its other subsidiaries;
 - iii. parent financial holding company or its subsidiaries;
 - iv. holding company with combined activity or its subsidiaries;
 - v. financial holding company with combined activity or its subsidiaries;
 - vi. entities related to entities defined in subpoints above (i to v).
 - e. the instrument is not subject to set-off or netting arrangements that would undermine the capacity to absorb losses in resolution;
 - f. the provisions governing the instrument contract do not include any incentive to pay through the call option or to repay before the maturity, the amount of the principal from the bank, except in case defined in in paragraph 2 of Article 10 of this Regulation;
 - g. the instrument can not be executed/settled or paid prior to their maturity date by the owner of the instrument, except in the cases defined in paragraph 3 of Article 10 of this Regulation;
 - h. where the instruments include one or more call options or early repayment options, these options are exercisable at the sole discretion of the issuer (bank), except in the cases referred to in Article 10 (2) of this Regulation;
 - i. the instrument may be executed, repaid or settled by the bank where the conditions set out in Article 12 of this Regulation are met;
 - j. the provisions governing the instrument contract do not specify directly or indirectly that the instrument can be executed / settled, or paid earlier by the bank, except in the case of voluntary liquidation or forced liquidation of the bank;
 - k. the provisions governing the instrument contract do not entitle the holder to accelerate the interest and principal payment plan in the future, except in the event of insolvency or liquidation of the bank;
 - l. the level of interest or dividend payments due on these instruments is not amended on the basis of the quality of the bank or the parent bank;
 - m. for instruments issued after the entry in force of this Regulation, the relevant contractual documentation and, where applicable, the prospectus related to the issuance of this instrument, explicitly refers to the possible exercise of the write-down and conversion powers in accordance with Article 45 of Law No. 133/2016.
 - n. for the instruments issued after the entry into force of this Regulation, the relevant contractual documentation and the prospectus regarding the issuance of this instrument, has been drafted in accordance with the Albanian legislation.
2. The Resolution Authority shall consult the Supervisory Authority when examining whether the conditions set out in this Article are met.

3. Where, the applicable conditions set out in this Article cease to be met, the liabilities shall immediately cease to qualify as eligible liabilities instruments.
4. Pursuant to the conditions set out in paragraph 1 of this Article, banks shall submit the following documentation as part of the request for classification of instruments as an eligible liability:
 - a. basic documentation (contract, prospectus, etc.) related to the issuance of these instruments;
 - b. a schematic illustration of the fulfillment of the required features / conditions for such instruments, as defined in paragraph 1 of this Article, giving the relevant references in the basic documentation as specified in (a) of this point;
 - c. a description of accounting treatments of the concerned instruments, together with the opinion of an authorized chartered auditor for their acceptability.
5. The Administrator responsible for Resolution shall take the decision to classify the instruments as an eligible liability and communicates it in writing to the bank.

Article 10

Amortisation of the maturity of eligible liabilities instruments for the purposes of meeting the "minimum requirements for regulatory capital instruments and eligible liabilities"

1. Eligible liabilities instruments with a residual maturity of at least one year shall fully qualify as eligible liabilities items. Eligible liabilities instruments with a residual maturity of less than one year shall not qualify as eligible liabilities items.
2. For the purposes of paragraph 1, where an eligible liabilities instrument includes an incentive for the creditor who may exercise the option (call) or request to repay the instrument prior to its initial maturity, the maturity of the instrument shall be defined as the earliest possible date on which he may exercise that option, at the discretion of the Resolution Authority.
3. For the purposes of paragraph 1, if the eligible liability instrument includes an incentive for the issuer who may exercise the option call or request to repay the instrument prior to its initial maturity, the maturity of the instrument shall be defined as the earliest possible date on which he may exercise that option, at the discretion of the Resolution Authority.

Article 11

The qualification of instruments as eligible liabilities owned by retail investors, for the purposes of meeting the "minimum requirements for regulatory capital instruments and eligible liabilities"

1. For the purpose of meeting the “minimum requirement for regulatory capital instruments and eligible liabilities”, the bank may use eligible liability instruments which are purchased

by retail investors, categorized under Article 62 of the Law "On Capital Markets" when all the following conditions are met:

- a. the bank performed a suitability test in accordance with Article 64 of the Law "On Capital Markets";
 - b. the bank determines that under the suitability test according (a) the liability is suitable for the retail investors;
 - c. the bank documents the suitability test according to Article 62 (3) of the Law "On Capital markets".
2. The provisions of point 1 of this Article shall apply to instruments issued after the entry into force of this regulation.
 3. Eligible liability instruments which are purchased by retail investors after the entry into force of this Regulation, must contain binding contractual provisions by which creditors agree to accept any reduction of principal or disbursed and unpaid amount, as well as any conversion or cancellation carried out during the exercise by the Resolution Authority of the write down and conversion powers according to article 45 of Law No.133 / 2016.

Article 12

Prior approval for reducing eligible liabilities instrument

1. The Bank shall obtain the prior approval of the Resolution Authority to reduce, repurchase, repay or exercise the call or redeem eligible liabilities instruments that are not covered by Article 38 of Regulation "On regulatory capital", prior to the date of their contractual maturity.
2. The Resolution Authority shall grant approval for a bank to reduce, repurchase, call or redeem eligible liabilities instruments where any of the following conditions is met:
 - a. earlier than or at the same time as an action referred to in paragraph 1, the bank replaces the eligible liabilities instruments with regulatory capital instruments or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the bank;
 - b. the bank has demonstrated to the satisfaction of the resolution authority that the regulatory capital instruments and eligible liabilities of the bank would, following the action in question, exceed the requirements for regulatory capital instruments and eligible liabilities laid down in Article 5 on this Regulation, by a margin that the resolution authority consider necessary.
3. Where a bank provides sufficient safeguards that meet the requirements laid down in paragraph 2 of this Article, the Resolution Authority, after consulting the Supervisory Authority, may grant a prior approval to that bank to effect calls, redemptions, repayments or repurchases of eligible liabilities instruments, subject to criteria that ensure that any such future actions will be in accordance with the conditions laid down in paragraph 2 of this Article.
4. This prior approval laid down in paragraph 2 of this Article, shall be granted only for a certain time period, which shall not exceed one year, after which it may be renewed. The general approval shall only be granted for a certain predetermined amount, which shall be set by the resolution authority.
5. The Resolution Authority shall withdraw the prior approval where a bank breaches any of the criteria provided for the purposes of that approval.

6. The Resolution Authority communicates the prior approval regarding the reduction of the eligible liabilities, in writing through the Administrator Responsible for the Resolution.

Article 13

Fulfilling the “Minimum requirement for regulatory capital instruments and eligible liabilities”

1. "The minimum requirement for regulatory capital instruments and eligible liabilities" shall be met by regulatory capital instruments and eligible liabilities identified in accordance with Articles 8, 9 and 10 of this Regulation.
2. For the purpose of paragraph 1, banks may use regulatory capital instruments (CET1, Tier 1, Tier 2) instruments and eligible liabilities, in the amount remaining after each of them is reduced by the amount needed to meet:
 - a. the requirements set out in the regulation, “On the regulatory capital”;
 - b. the own fund requirements defined by the Supervisory Authority.
3. When “the minimum requirement for regulatory capital instruments and eligible liabilities” is fulfilled through Common Equity Tier I capital instruments, it is performed before the fulfillment of the requirement for macroprudential capital buffers pursuant to Article 6 of Regulation “On Macroprudential Capital buffers”.
4. The Resolution Authority shall regularly develop and update methodologies and policies relating to the manner of fulfilling the “minimum requirement for regulatory capital instruments and eligible liabilities” and shall publish them.

Article 14

Corrective measures

1. The bank shall immediately notify the Bank of Albania in capacity of Resolution Authority in the event of failure to meet the minimum requirement for regulatory capital instruments and eligible liabilities set out in Article 5 of this Regulation.
2. Following the notification according to paragraph 1, the Resolution Authority shall undertake at least one of the following actions:
 - a. powers to address or remove impediments to resolvability in accordance with Article 15 of Law No. 133/2016;
 - b. exercises the power to limit the distribution payment, for the purposes of "requirement for regulatory capital instruments and eligible liabilities", as defined in Article 15 of this regulation;;
 - c. early intervention measures in accordance with Article 17 of Law No. 133/2016;

- d. penalties in accordance with Articles 80 and 81 of Law No. 133/2016;
 - e. require a bank to submit a plan to restore compliance with Article 5 of this regulation:
 - i. restoring a compliance with the minimum requirement set out in Article 5 of this Regulation and as the case may be;
 - ii. restoring at the same time, compliance with the minimum requirement set out in Article 5 of this Regulation and the requirement set out in Article 6 of the Regulation "On macroprudential buffers ";
 - f. require bank to issue eligible liabilities to meet the requirements of Article 5;
 - g. require a bank to take other steps to meet the minimum requirement for regulatory capital instruments and eligible liabilities under Article 5, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument; and
 - h. require a bank, to change the maturity profile of:
 - i. regulatory capital instruments, after having obtained the agreement of the Supervision Authority; and
 - ii. eligible liabilities referred to in Article 9 of this regulation.
3. Without prejudice to paragraph 1 of this Article, if any breach of minimum requirement for regulatory capital instruments and eligible liabilities, the Bank of Albania in its capacity as Supervisory Authority and Resolution Authority may also carry out an assessment of whether the bank is failing or is likely to fail, in accordance with Article 21 of Law No. 133/2016.
 4. The bank shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 1(a) of this article, propose to the resolution authority possible measures and the timeline for their implementation to ensure that it complies with Articles 5 and the requirement referred to in point 6 of Regulation "On Macro-prudential capital buffers", where a substantive impediment to resolvability is due to either of the following situations:
 - a. the bank meets the combined buffer requirement defined in Article 6 of Regulation "On Macro-prudential capital buffers" when considered in addition to each of the requirements referred to regulatory capital instruments requirements pursuant to the regulation "On regulatory capital" and in addition to regulatory capital instruments requirements, but it does not meet the combined buffer requirement defined in Article 6 of the regulation "On Macro-prudential capital buffers" when considered in addition to the requirements referred to article 5 of this regulation; or
 - b. the bank does not meet the requirements referred to in article 5 of this Regulation.
 5. The timeline for the implementation of measures proposed under paragraph 4 of this article take into account the reasons for the substantive impediment. The resolution authority, after consulting the competent authority, shall assess whether those measures effectively address or remove the substantive impediment in question.

6. With the exception of point 2, letter "a" of this article, the decision of the Resolution Authority on the corrective measures set out in this article shall be communicated in writing by the Administrator Responsible for the Resolution.

Article 15

Powers to prohibit certain distributions

1. Where a bank is in a situation where it meets the combined buffer requirements referred to Article 6 of Regulation “On Macro-prudential capital buffers” when considered in addition to regulatory capital instruments requirements pursuant to the Regulation “On regulatory capital” but it fails to meet the combined buffer requirement when considered in addition to the requirements referred to article 5 on this regulation when calculated in accordance with point 3 of article 5 of this regulation, the Resolution Authority shall have the power, in accordance with paragraphs 3 and 4 of this Article, to prohibit the bank from distributing more than the Maximum Distributable Amount related to the minimum requirement for regulatory capital instruments and eligible liabilities (‘M- MDA’), in accordance with paragraph 7 of this article, through any of the following actions:
 - a. make a distribution in connection with Common Equity Tier 1 capital;
 - b. create an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement; or
 - c. make payments on Additional Tier 1 instruments.
2. Where the bank is in the situation referred to in the paragraph 1 of this article, it shall immediately notify the Resolution Authority and the Supervisory Authority.
3. In the situation referred to in point 1, the Resolution Authority, after consulting the Supervisory Authority, assess whether to exercise the power referred to in point 1, taking into account all of the following elements:
 - a. the reason, duration and extent of non-compliance with the regulatory requirements set out in paragraph 1 and its impact on resolvability;
 - b. the development of the entity's financial situation and the likelihood of it fulfilling, in the foreseeable future, the condition referred to in letter (a) of Article 21(1) of Law 133/2016;
 - c. the prospect that the entity will be able to ensure compliance with the requirements referred to in point 1 within a reasonable timeframe;
 - d. where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 8 and 9 of this Regulation if that inability is idiosyncratic or is due to market- wide disturbance;
 - e. whether the exercise of the power referred to in paragraph 1 is the most adequate and proportionate means of addressing the situation of the entity, taking into account its

potential impact on both the financing conditions and resolvability of the entity concerned.

4. The Resolution Authority shall repeat its assessment of whether to exercise the power referred to in paragraph 1 at least every month for as long as the entity continues to be in the situation referred to in paragraph 1.
5. If, nine months after notification by the bank, the resolution authority after consulting the supervisory authority, consider that the bank is still in the conditions referred to in paragraph 1, it shall exercise the powers referred to in paragraph 1 except where the resolution authority finds, that at least two of the following conditions are fulfilled:
 - a. the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based financial market stress across several segments of financial markets;
 - b. the disturbance referred to in point (a) not only results in the increased price volatility of the regulatory capital instruments and eligible liabilities instruments of the bank or increased costs for the bank, but also leads to a full or partial closure of markets which prevents the bank from issuing regulatory capital instruments and eligible liabilities instruments on those markets;
 - c. the market closure referred to in point (b) is observed not only for the concerned bank, but also for several other banks;
 - d. the disturbance referred to in point (a) prevents the concerned entity from issuing regulatory capital instruments and eligible liabilities instruments sufficient to remedy the failure; or
 - e. an exercise of the power referred to in paragraph 1 leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.
6. Every month, the resolution authority shall repeat its assessment of whether the exception referred to in the paragraph 5.
7. The M-MDA shall be calculated by multiplying the sum calculated in accordance with paragraph 8 by the factor determined in accordance with paragraph 9. The M-MDA shall be reduced by any amount resulting from any of the actions referred to in points (a), (b) or (c) of paragraph 1.
8. The sum to be multiplied in accordance with paragraph 7 shall consist of:
 - a. any interim profits not included in Common Equity Tier 1 capital, net of any distribution of profits or any payment resulting from the actions referred to in points (a), (b) or (c) of paragraph 1 of this Article;plus

- b. any year-end profits not included in Common Equity Tier 1 capital, net of any distribution of profits or any payment resulting from the actions referred to in points (a), (b) or (c) of paragraph 1 of this Article;
minus
- c. amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

9. The factor referred to in paragraph 7 shall be determined as follows:

- a. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 5 of this regulation, expressed as a percentage of the total risk exposure, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;
- b. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out Article 5 of this regulation, expressed as a percentage of the total risk exposure”, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;
- c. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 5 of this regulation, expressed as a percentage of the total risk exposure amount, is within the third quartile of the combined, buffer requirement, the factor shall be 0,4;
- d. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 5 of this regulation, expressed as a percentage of the total risk exposure, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6.

10. The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

- a. Lower bound of quartile $= (\text{Combined buffer requirement} \times (Q_{n-1})/4)$;
- b. Upper bound of quartile $= (\text{Combined buffer requirement} \times Q_n)/4$

where ‘ Q_n ’ = the ordinal number of the quartile concerned.

11. The Resolution Authority through Administrator Responsible for the Resolution, communicates officially the decision-making of the Resolution Authority on the corrective measures defined in this article.

CHAPTER IV

REPORTING REQUIREMENTS AND INTERIM PERIODS

Article 16

Supervisory reporting

1. The Bank shall report to the Bank of Albania 6 months after the entry into force of the regulation, the indicators defined in the reporting forms, included in Annex 1 of this Regulation.
2. The Bank shall report at least on a quarterly basis the information referred to paragraph 1 with a more frequent basis at the request of the Bank of Albania.
3. In case the bank has applied the powers of write-down and conversion according to article 45 of law no. 133/2016 and / or the instrument of bail-in according to article 30 of law no. 133/2016, the requirements for reporting and disclosure set out in this Article shall apply after 12 months after the expiration of the period of 2 years specified in paragraph 7 of Article 17 of this Regulation.
4. If in the resolution plan is provided wind up under insolvency procedure, the bank does not comply with the requirements for reporting and disclosure.

Article 17

Implementation of requirements for the interim period and for the period after the resolution.

1. Banks shall meet "the minimum requirement for regulatory capital instruments and eligible liabilities" set out in Article 5 of this Regulation within 31 December 2027.
2. During the interim period from the entry into force of this regulation until the deadline for fulfilling the request as defined in paragraph 1, the Resolution Authority determines and communicates to the bank the intermediate level of "minimum requirement for regulatory capital instruments and eligible liabilities" in order to meet the final request within 31 December 2027.
3. The intermediate level of "minimum requirement for regulatory capital instruments and eligible liabilities" must ensure a gradual fulfillment of the final requirement set out in Article 5 of this Regulation. The Resolution Authority shall consider the following elements for determining the intermediate level referred to in paragraph 3:
 - a. developments in the bank's financial situation;
 - b. the bank's financing model and in particular the dependence on financing through deposits and the issuance of debt instruments;
 - c. access to capital markets in relation to the issuance of debt instruments; and
 - d. the size of the fulfillment of the requirement set out in Article 5 of this Regulation through common equity tier 1.
4. The bank shall meet the intermediate level of "minimum requirement for regulatory capital instruments and eligible liabilities" within 12 months after the official communication.
5. At the end of the interim period, the bank's "minimum requirement for regulatory capital instruments and eligible liabilities" is equal to the requirements set out in Article 5 of this Regulation.

6. “Minimum requirement for regulatory capital instruments and eligible liabilities” defined in Article 5 of this Regulation shall not apply for a period of 2 years after:
 - a. The Resolution Authority has applied on the bank the instrument of bail-in in accordance with Article 30 of Law No. 133/2016; or
 - b. the bank, the banking group or the bank’s shareholder has taken a measure under letter “b” of article 21 of law no. 133/2016 where the capital instruments or other liabilities have been converted into instruments of common equity tier 1 or when the Resolution Authority has applied to the bank the power of write-down and conversion in accordance with Article 45 of Law no. 133/2016, recapitalizing the bank without the application of the resolution instruments.
7. At the end of the 2-year period according to paragraph 6 of this article, the Resolution Authority determines the appropriate interim period during which the bank must meet the "minimum requirement for regulatory capital instruments and eligible liabilities".
8. The requests defined in this Article shall be communicated in writing by the Administrator Responsible for Resolution.

Article 18
Final provision

Annex 1, as well as explanatory notes for completing the templates attached to this Regulation are an integral part of it.