

DECISION
No. 35, dated 7.7.2021

**APPROVAL OF REGULATION “ON CLASSES OF ARRANGEMENTS TO BE PROTECTED IN
A PARTIAL TRANSFER”**

In accordance with Article 12 (a) and Article 43(c) of the Law No. 8269, dated 23.12.1997 “On the Bank of Albania”, as amended, as well as Article 59 (5) and Article 87 of the Law No. 133/2016, dated 22.12.2016 “On 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 approve the regulation “On classes of arrangements to be protected in a partial transfer”, according to the content following this decision.
2. To assign the Resolution Department the responsibility to follow up and implement this decision.
3. Banks licensed by the Bank of Albania are charged, with the implementation of this Decision.
4. To assign the Governor’s Office and Research Department the responsibility of publishing the decision, on the Official Gazette of the Republic of Albania and the Official Bulletin of the Bank of Albania, respectively.

This decision enters into force 15 (fifteen) days after publication in the Official Journal of the Republic of Albania.

Secretary
Elvis ÇIBUKU

Chair
Gent SEJKO

REGULATION

“ON CLASSES OF ARRANGEMENTS TO BE PROTECTED IN A PARTIAL TRANSFER”

Article 1

Subject matter

This Regulation lays down the conditions regarding the types of arrangements which are protected during the partial transfer of assets, rights and liabilities of a bank under resolution.

Article 2

Scope of application

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

Article 3

Legal grounds

This Regulation is issued pursuant to:

- a. Article 12 (a) and Article 43 (c) of the Law No. 8269, dated 23.12.1997 "On the Bank of Albania," as amended;
- b. Article 59 (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," following referred as the Law No. 133/2016.

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.
2. Except as provided on paragraph 1, "Securitization" has the same meaning as defined in Article 4 (43) of Regulation No. 48, dated 31.07.2013 "On the Capital Adequacy Ratio", as amended.

Article 5

Conditions relating to security arrangements, including securities financing transactions

1. Security arrangements pursuant to Article 59 (1) (a) of the Law No. 133/2016 shall include the following:
 - a. arrangements stipulating guarantees and personal securities;
 - b. liens arrangements, mortgage and insurance lien, and other similar interests;
 - c. securities lending transactions, where in exchange for funds, the borrower temporarily transfers to the collateral lender for the entire duration of the loan, and pays the lender a fee or interest value.
2. Security arrangements shall qualify as security arrangements pursuant to Article 59(1) (a) of the Law No. 133/2016 only if the rights or assets to which the security interest is attached or would attach upon an enforcement event are sufficiently identified or identifiable in accordance with the terms of the arrangement and the applicable national law.

Article 6
Conditions relating to set-off arrangements

1. Set-off arrangements entered into between a bank and a single counterparty shall qualify as set-off arrangements referred to Article 59 (1) (c) of the Law No. 133/2016 where they relate to rights and liabilities arising under financial contracts or derivatives.
2. Set-off arrangements entered into between a bank and one or more counterparties shall qualify as set-off arrangements referred to Article 59 (1) (c) of the Law No. 133/2016 in any of the following circumstances:
 - a. where the arrangements are linked to the counterparty's activity as a central counterparty;
 - b. where the arrangements are related to rights and obligations towards payment systems or securities settlement systems and are linked to their activity as payment or securities settlement systems.
3. The Resolution Authority may decide, in individual cases, that set-off arrangements entered into between a bank and one or more counterparties so far as they relate to other types of rights and liabilities than those referred to in paragraphs 1 and 2 may qualify as set-off arrangements pursuant to Article 59 (1)(c) of the Law No. 133/2016 where the arrangements are recognized for risk mitigation purposes under the applicable prudential rules and the protection, in particular by non-separability, is a condition for that recognition.

Article 7
Conditions relating to netting arrangements

1. Contractual netting agreements entered into between the bank and a single counterparty shall qualify as netting arrangements pursuant to Article 59 (1) (d) of the Law No. 133/2016 where they relate to rights and liabilities arising under financial contracts or derivatives.

2. Contractual netting agreements entered into between the bank and one or more counterparties shall qualify as netting arrangements pursuant to Article 59 (1)(d) of the Law No. 133/2016 in any of the following circumstances:
 - a. where the arrangements are linked to the counterparty's activity as a central counterparty;
 - b. where the arrangements are related to rights and obligations towards payment systems or securities settlement systems and are linked to their activity as payment or securities settlement systems.
3. The Resolution Authority may decide, in individual cases, that netting arrangements entered into between a bank and one or more counterparties may qualify as a netting arrangement pursuant to Article 59 (1) (d) of the Law No. 133/2016 where they are recognized for risk mitigation purposes under the applicable prudential rules and the protection, in particular by non-separability, is a condition for that recognition.

Article 8

General conditions applying to security arrangements, set-off and netting arrangements and structured finance arrangements

1. Articles 5, 6 and 7 are without prejudice to the following powers of the resolution authority:
 - a. to protect any type of arrangements which can be subsumed under one of the classes in letters “a”, “c”, “d” and “f” of Article 59 (1) of the Law No. 133/2016, and which are protected in normal insolvency proceedings against a temporary or indefinite separation;
 - b. to protect any type of arrangements which do not fall within the scope of Article 59 (1) of the Law No. 133/2016 and which are protected in normal insolvency proceedings against a temporary or indefinite separation.
2. Resolution authority may, in individual cases, exclude from the protection afforded by Article 59 (2) of the Law No. 133/2016, security arrangements, or set-off and netting arrangements which relate to contracts including any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor.

Article 9

Conditions relating to other finance arrangements, including securitisations and instruments used for hedging purposes

1. Other finance arrangements pursuant to Article 59(1) (f), of the Law No. 133/2016 shall include the following:

- a. securitisations in which the underlying exposures have been placed into tranches and transferred by a full title transfer from the balance sheet of the originator, to the bank under resolution (true sale securitisation). In true sale securitisations, any role of the originator in the structure, including servicing loans, providing any form of risk protection or providing liquidity, shall be considered as a liability which forms part of the structured finance arrangement;
 - b. securitisations by means of contractual instruments, where the underlying assets remain on the balance sheet of the bank under resolution (synthetic securitisation). In these securitisations, the interest of the security is considered as a right that is part of the financial arrangement only if it is attached to assets which are sufficiently identified or identifiable in accordance with the terms of the agreement and applicable law.
2. Agreements constituting a securitisation structure covering mutual relationships between originators, issuers, trustees, servicers, cash managers and swap and credit protection counterparties, shall be considered as forming part of structured finance arrangements if those mutual relationships are directly linked to the underlying assets and the payments to be made from the proceeds generated by these assets to the holders of the structured instruments. Those mutual relationships include liabilities and rights related to the underlying assets, liabilities under the instruments issued, and security arrangements, including derivative transactions, required for maintaining the flow of payments under these liabilities.
3. Paragraph 2 in this Article shall be without prejudice to the power of the Resolution Authority to decide, on a case-by-case basis and having regard to the specific structure of the structured finance arrangement pursuant to Article 59 (1) (f) of the Law No. 133/2016, that other agreements between the parties referred to in paragraph 2, such as loan servicing agreements, which are not directly linked to the underlying assets and the payments to be made, form part of such structured finance arrangement.

Article 10

Identification of arrangements according to the conditions set out in this regulation

In accordance with the provisions laid down in this regulation, the bank shall take care of identifying the arrangements according to the conditions set out in this regulation and maintaining a separate register for them.

**Chairman of the Supervisory Council
Gent Sejko**