



REPUBLIKA E SHQIPËRISË
BANKA E SHQIPËRISË
KËSHILLI MBIKËQYRËS

DECISION
No. 44, dated 5.6.2019

ON
APPROVAL OF REGULATION
“ON VALUATION FOR THE PURPOSES OF RESOLUTION”

Pursuant to Article 43, letter “c”, of the Law no. 8269, dated 23.12.1997 “On the Bank of Albania”, as amended, as well as Article 24 paragraph 14, Article 36, paragraph 6 and Article 57, paragraph 4 of the Law No. 133/2016, dated 22.12.2016 “On Recovery and Resolution of Banks in the Republic of Albania”, upon the proposal by the Resolution Department, the Supervisory Council of the Bank of Albania,

DECIDED:

1. To adopt the Regulation “On valuation for the purposes of resolution”, in accordance with the text attached to this Decision.
2. The Resolution Department shall be responsible for the implementation of this Decision.
3. The Governor’s Office and Research Department shall be responsible for the publication of this Decision, in the Official Journal of the Republic of Albania and the Official Bulletin of the Bank of Albania, respectively.

This decision shall enter into force 15 (fifteen) days after publication on the Official Journal of the Republic of Albania.

SECRETARY

Elvis Çibuku

CHAIRMAN

Gent Sejko

SECTION I
General Provisions

Article 1
Object

1. The object of this Regulation is to determine:
 - a. the criteria, the conditions and manner of the selection of the independent valuer and of carrying out the valuation for the purpose of resolution;
 - b. manner of performing the valuation according to Article 24, paragraph 5 of the Law No.133 / 2016, dated 22.12.2016 "On the Recovery and Resolution in Banks in the Republic of Albania";
 - c. the methodology for valuation of the difference in the treatment method to determine whether a bank's shareholders and creditors would have receive better treatment if the bank had entered into normal insolvency proceedings instead of the resolution procedure under Article 57 of Law No. 133/2016, dated 22.12.2016 "On the Recovery and Resolution of Banks in the Republic of Albania";
 - d. the methodology for determining the value of obligations deriving from derivative products according to Article 36 of Law No. 133/2016, dated 22.12.2016 " On the Recovery and Resolution of Banks in the Republic of Albania ".

Article 2
Subjects

1. This Regulation shall apply to:
 - a. subjects that may be selected to perform the function of the valuer, according to this regulation;
 - b. banks and branches of foreign banks, licensed by the Bank of Albania.

Article 3
Legal ground

1. This Regulation is issued pursuant to:
 - a. Article 43, letter "c" of Law No. 8269, dated 23.12.1997 "On the Bank of Albania", as amended;
 - b. Article 24, paragraph 14, Article 36, paragraph 6 and Article 57, paragraph 4 of Law No.133 / 2016, dated 22.12.2016 "On the Recovery and Resolution of Banks in the Republic of Albania".

Article 4

Definitions

1. For the purposes of this Regulation, the definitions, the definitions shall have the same meaning as defined 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;
 - 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. In addition to paragraph 1 of this article, for the purposes of this Regulation's implementation, the following terms shall have this meaning:
 - a. **Valuation** means either the assessment of the bank's assets and liabilities, conducted by an independent valuer pursuant to paragraph 1 Article 24 of Law No. 133/2016 or the provisional valuation conducted by the Resolution Authority or the valuer under Article 24, paragraphs 2 and 8, of Law No.133/2016;
 - b. **Valuer** means the independent valuer meeting the conditions laid down in Article 5 of this Regulation;
 - c. **Fair value** means the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date, as defined in the relevant accounting framework;
 - d. **Hold value** means the present value, discounted at an appropriate rate, of cash flows that the bank can reasonably expect under fair, prudent and realistic assumptions from retaining particular assets and liabilities, considering factors affecting customer or counterparty behavior or other valuation parameters in the context of resolution;
 - e. **Measurement basis** is the approach for determining the monetary amounts at which assets or liabilities are presented by the valuer;
 - f. **Disposal value** is determined by the estimate based on the cash outflow, deducting the decommissioning costs and expected value of any collateral that the bank may reasonably expect under the current market conditions , through a regular sale or through the transfer of assets or liabilities;
 - g. **Franchise value** means the net present value of cash flows that can reasonably be expected to result from the maintenance and renewal of assets and liabilities or businesses and includes the impact of any business opportunities, as relevant, including those stemming from the different resolution actions that are assessed by the valuer. Franchise value may be higher or lower than the value arising from the contractual terms and conditions of assets and liabilities existing at the valuation date;
 - h. **Equity value** means an estimated market price, for transferred or issued shares, that results from the application of generally accepted valuation methodologies.

Depending on the nature of the assets or business, equity value may comprise franchise value;

- i. **Valuation date** means the reference date for the valuation referred to in Article 11;
- j. **Resolution decision date** means the date on which the decision to resolve a bank, is adopted by the Resolution Authority pursuant to Article 65 of Law No. 133/2016;
- k. **Close-out date** means the day and time of the close-out specified in the communication by the Resolution Authority in the decision to terminate derivative contract deals;
- l. **Replacement trade** means a transaction entered into on or after the close-out date of a derivative contract to re- establish, on a net risk exposure basis, any hedge or related trading position that has been terminated on equivalent economic terms as the closed-out transaction;
- m. **Commercially reasonable replacement trade** means a replacement trade entered into on a netted risk exposure basis, on terms consistent with common market practice and by making reasonable efforts to obtain best value for money.

SECTION II

CRITERIA FOR SELECTION OF VALUER FOR THE PURPOSE OF RESOLUTION

Article 5

Elements of independence

1. The valuer for the purposes of resolution may be a legal or natural person.
2. In the exercise of his function, according to Law No. 133/2016, the valuer must be independent from the bank , the Resolution Authority and any relevant public authority;
3. The valuer is independent according to paragraph 2, when all of the following conditions are met:
 - a. the valuer possesses the qualifications, experience, ability, knowledge and resources required and can carry out the valuation effectively without undue reliance on the bank, Resolution Authority or any relevant public authority in accordance with Article 6;
 - b. the valuer is legally separated from the bank, Resolution Authority or any relevant public authorities in accordance with Article 7;
 - c. the valuer has no material common or conflicting interest within the meaning of Article 8.

Article 6

Qualifications, experience, ability, knowledge and resources

1. The valuer shall possess the necessary qualifications, experience, ability and knowledge in all matters considered relevant by the Resolution Authority.
2. The valuer shall hold, or have access to, such human and technical resources to carry out the valuation, taking into account the nature, size and complexity of the valuation to be performed.
3. In relation to the conduct of the valuation the independent valuer shall not:
 - a. seek nor take instructions or guidance from the bank, the Resolution Authority or any relevant public authority;
 - b. seek nor accept financial or other advantages from the bank, the Resolution Authority or any relevant public authority;
4. Paragraph 3 shall not prevent:
 - a. the provision of instructions, guidance, premises, technical equipment or other forms of support where, in the assessment of the Resolution Authority, this is considered necessary for achieving the goals of the valuation;
 - b. the payment to the valuer of such remuneration and expenses as are reasonable in connection with the conduct of the valuation.

Article 7 **Structural separation**

For the purposes of letter 'b', paragraph 3 of Article 5 the following requirements shall apply:

- a. in relation to natural persons, the valuer shall not be an employer or contractor of Resolution Authority, any relevant public authority or the bank to be valued or the banking group comprising the bank;
- b. in relation to legal persons, the valuer shall not belong to the same group/companies/organisation as Resolution Authority, any relevant public authority or the bank to be valued or banking group comprising the bank.

Article 8 **Conflict of interest**

1. The valuer shall not have an actual or potential material interest in common or in conflict with bank, Resolution Authority or any relevant public authority.
2. For the purposes of paragraph 1, an actual or potential interest shall be deemed material whenever, in the assessment of the Resolution Authority, it could influence, or be reasonably perceived to influence, the valuer's judgement in carrying out the valuation.

3. For the purposes of paragraph 1, interests in common or in conflict with at least the following parties shall be relevant:
 - a. the senior management and the members of the management body of the relevant bank;
 - b. the legal or natural persons who control or have a qualifying holding in the relevant bank;
 - c. the creditors identified to be significant on the basis of the information available to the Resolution Authority;
 - d. each group entity.
4. For the purposes of paragraph 1, at least the following matters shall be relevant:
 - a. the provision by the valuer of services, including the past provision of services, to the relevant bank and the persons referred to in paragraph 3, and in particular the link between these services and the elements relevant for the valuation;
 - b. personal and financial relationships between the valuer and the relevant bank and the persons referred to in paragraph 3;
 - c. investments or other material financial interests of the valuer;
 - d. in relation to legal persons, any structural separation or other arrangements that shall be put in place to address any threats to independence such as self-review, self-interest, advocacy, familiarity, trust or intimidation, including arrangements to differentiate between those staff members who may be involved in the valuation and other staff members.
5. Without prejudice to paragraphs 3 and 4, a valuer shall be deemed to have an actual material interest in common or in conflict with the bank where the valuer, in the year preceding the date on which that person's eligibility to act as valuer is assessed, has completed a statutory audit of the bank.
6. Any person considered for the position of valuer, or appointed as an valuer shall:
 - a. maintain, in accordance with any applicable codes of ethics and professional standards, policies and procedures to identify any actual or potential interest which may be considered to constitute a material interest in accordance with paragraph 2;
 - b. without delay notify the appointing authority of any actual or potential interest which the valuer considers may, in the assessment of the authority, be considered to amount to a material interest in accordance with paragraph 2;
 - c. take appropriate steps to ensure that none of the staff or others involved in carrying out the valuation have any material interest of a kind as referred to in paragraph 2;

- d. declare in writing to the Resolution Authority that meets the requirements of this article to exercise the function of valuer independently.

Article 9 **Selecting the valuer**

1. The Resolution Authority selects the valuer to carry out the valuation based on paragraph 11 of article 24 of Law No. 133/2016.
2. The Resolution Authority shall review the documentation submitted in accordance with the terms and conditions of this Regulation.
3. The Resolution Authority may, in exceptional cases, establish additional criteria, which must be met by the valuer in order to be selected to carry out the assessment, including the cost of the engagement as well as its operational, technical and personnel capacity.
4. Pursuant to this Regulation, the Resolution Authority concludes an agreement with the valuer to conduct the valuation, which stipulates inter alia, the subject of the valuation, the deadline for submission of the valuation report, the confidentiality clause referring to the subject valuation and other elements.

SECTION III **VALUATION FOR THE PURPOSE OF RESOLUTION**

Article 10 **General criteria**

1. When performing the valuation the valuer shall consider circumstances affecting the expected cash flows of, and discount rates applicable to a bank's assets and liabilities, and shall aim to fairly represent the bank's financial position in the context of the opportunities and risks it deals with.
2. The valuer shall disclose and justify the key assumptions used in the valuation. Any significant deviation in the valuation from the assumptions used by the bank's management in the preparation of financial statements and in the calculation of the bank's regulatory capital and capital requirements shall be supported by the best available information.
3. The valuer shall provide the best point estimate of the value of a given asset, liability, or combinations thereof. Where appropriate, the results of the valuation shall also be provided in the form of value ranges.
4. Criteria laid down in this Regulation for the measurement of individual assets and liabilities of a bank, shall also apply to the measurement of portfolios or groups of assets or combined assets and liabilities, businesses, or the bank considered as a whole, as the circumstances require.

5. The valuation shall subdivide creditors in classes according to their priority ranking under applicable insolvency law in the relevant jurisdiction, and shall include the following estimates:
 - a. the value of claims of each class according to the applicable insolvency law and, where relevant and feasible, according to the contractual rights conferred on claimants;
 - b. the proceeds each class would receive if the bank were wound-up under normal insolvency proceedings;

When calculating the estimates pursuant to letters ‘a’ and ‘b’, the valuer may apply the criteria set out in Article 26 of this Regulation, as appropriate.

6. Where appropriate and feasible, taking into account timing and credibility of the valuation, the Resolution Authority may request several valuations from the valuer. In that case, the Resolution Authority shall establish the criteria to determine which valuation shall be used for the purposes set out in Article 24 of Law 133/2016.

Article 11 **Valuation date**

1. The valuation date shall be one of the following dates:
 - a. the reference date as determined by the valuer on the basis of the date as close as possible before the expected date of a decision by the Resolution Authority to put the bank in resolution or to exercise the power to write-down or to convert capital instruments,
 - b. the resolution decision’s date where an *ex-post* definitive valuation is carried out as required by paragraph 9, Article 24, of Law 133/2016.
2. In relation to liabilities arising from derivative contracts, at the close-out date or, if that would not be commercially reasonable, the day and time at which a price is available in the underlying market for the derivative contract. Where the valuer determines the early termination amount at the prices of replacement trades pursuant to paragraph 1 of Article 33, the day and time of the conclusion of the replacement trades.

Article 12 **Sources of information**

The valuation shall be based on any information pertinent to the valuation date which is deemed relevant by the valuer. In addition to the bank’s financial statements, related audit reports and regulatory reporting as of a period ending as close as possible to the valuation date, that information may include the following:

- a. the updated financial statements and regulatory reporting prepared by the bank as close as possible to the valuation date;
- b. an explanation of the key methodologies, assumptions and judgements used by the bank in order to prepare the financial statements and regulatory reporting;
- c. data contained in the records of the bank;
- d. relevant market data;
- e. conclusions drawn by the valuer from discussion with management and auditors;
- f. where available, supervisory assessments of the bank's financial condition including information acquired pursuant to letter 'f', paragraph 1, Article 17, of Law No. 133/2016;
- g. industry-wide assessments of asset quality, where relevant to the bank's assets, as well as stress test results;
- h. valuations of peers, adequately adjusted to capture the bank's specific circumstances;
- i. historical information, adequately adjusted to eliminate factors that are no longer relevant, and incorporate others that did not affect the historical information; or
- j. trend analyses, adequately adjusted to reflect the bank's specific circumstances.

Article 13

Impact of group arrangements

1. Where the bank forms part of a group, the valuer shall take into account the impact that existing contractual intra-group support arrangements can have on the value of the assets and liabilities where, on the basis of the circumstances, it is probable that those arrangements will be put into effect.
2. The valuer shall only take into account the impact of other formal or informal arrangements within the group where, on the basis of the circumstances, it is probable that those arrangements shall remain in place in the context of a group's stressed financial condition or in resolution.
3. The valuer shall determine whether the resources of a bank within the group are available to meet losses of other group entities.

Article 14

Valuation report

The valuer shall prepare a valuation report to the Resolution Authority which besides the elements mentioned in paragraph 6 and 7 of Article 24 of law no.133 / 2016, includes at least the following elements:

- a. valuation what treatment each category of shareholders and creditors would receive if the bank were placed under normal insolvency proceedings;
- b. the valuation of the liabilities arising from derivatives carried out in accordance with Title VII of this Regulation ;
- c. a summary of the valuation including a discussion of best point estimate, value ranges and sources of valuation uncertainty;
- d. an explanation of the key methodologies and assumptions used by the valuer when performing the valuation, how sensitive the valuation is to these choices and, where feasible, an explanation of how those methodologies and assumptions differ from those used for other relevant valuations including any preliminary resolution valuations;
- e. any additional information which in the valuer's opinion would assist the Resolution Authority for purposes of Article 24 of Law 133/2016.

CHAPTER IV VALUATION TO INFORM RESOLUTION TRIGGER

Article 15 General principles

1. Before deciding whether the conditions for initiating a resolution procedure are met, the Resolution Authority shall ensure that a fair, prudent and realistic valuation of the value of the bank's assets and liabilities is performed by an independent valuer from the bank, by the Resolution Authority and any other public authority, selected in accordance with the requirements of Chapter II of this Regulation.
2. The valuations for the purpose of letter 'a', paragraph 5, Article 24 of Law No. 133/2016 shall be based on fair and realistic assumptions and shall seek to ensure that losses under the appropriate scenario are fully recognised. Where such valuation is available, it shall inform the determination of the Bank of Albania in its Supervision and Resolution Authority, that the bank is failing or likely to fail as referred to letter 'a', paragraph 1, of Article 21, of Law No. 133/2016. Based on existing supervisory guidance or other generally recognised sources setting out criteria conducive to the fair and realistic measurement of different types of assets and liabilities, the valuer may challenge the assumptions, data, methodologies and judgements on which the bank based its valuations for financial reporting obligations or for the calculation of regulatory capital and capital requirements and disregard them for the purposes of the valuation.

3. The valuer shall determine the most appropriate valuation methodologies which may rely on the bank's internal models where the valuer deems it appropriate taking into account the nature of the bank's risk management framework and the quality of data and information available.
4. The resulting valuations shall be consistent with the applicable accounting and prudential regulatory framework and with this Regulation.

Article 16

Areas requiring particular attention in the valuation

The valuer shall particularly focus on areas subject to significant valuation uncertainty which have a significant impact on the overall valuation. For those areas the valuer shall provide the results of the valuation in the form of best point estimates and, where appropriate, value ranges, as laid down in paragraph 3, Article 10 of this Regulation. Those areas shall include:

- a. loans or loan portfolios, the expected cash flows of which depend on a counterparty's ability, willingness or incentive to perform on its obligation, where those expectations are driven by assumptions relating to delinquency rates, probabilities of default, loss given default, or instrument characteristics, especially where evidenced by loss patterns for a portfolio of loans;
- b. repossessed assets, the cash flows of which are affected by both the asset's fair value at the time the bank forecloses on the related security or lien, and the expected evolution of such value after foreclosure;
- c. instruments measured at fair value where the determination of that value in accordance with accounting or prudential requirements on their marking to market or marking to model is no longer applicable or valid taking into account the circumstances;
- d. goodwill and intangibles, where the impairment test may depend on subjective judgement, including as regards the reasonably attainable cash flow stream, discount rates, and the perimeter of cash generating units;
- e. legal disputes and regulatory actions, the expected cash flows of which may be subject to varying degrees of uncertainty relating to their amount and/or timing;
- f. items including pension assets and liabilities and deferred tax items, as appropriate.

Article 17

Factors affecting the valuation

1. The valuer shall take into account general factors that may affect the key assumptions on which the values of assets and liabilities in the areas referred to in Article 16 are based, including the following factors:
 - a. the macroeconomic and industry circumstances may affect the bank;
 - b. the bank's business model and changes in its strategy;
 - c. the bank's asset selection criteria, including loan underwriting policies;
 - d. circumstances and practices that are likely to lead to payment shocks;
 - e. circumstances affecting the parameters used to determine risk weighted assets for the calculation of minimum capital requirements;
 - f. the impact of the bank's financial structure on the capacity of the bank to retain assets for the expected holding period and the bank's ability to generate predictable cash flows;
 - g. general or bank-specific liquidity or funding concerns.
2. The valuer shall clearly separate any material unrealised gains identified in the valuation process, to the extent that those gains have not been recognised in the valuation, and shall provide adequate information in the valuation report of the exceptional circumstances that have led to those gains.

CHAPTER V VALUATION FOR CHOOSING THE RESOLUTION INSTRUMENT

Article 18 General principles

1. The Resolution Authority, after determining that a bank meets the conditions for resolution, informs through this valuation the resolution action to be adopted, the extent of any eventual write-down or conversion, and other decisions on the implementation of resolution tools that consider the (yet hypothetical) impact of actions that the Resolution Authority may adopt in implementing the resolution strategy.
2. The valuer shall assess the impact on the valuation of each resolution action that the Resolution Authority may adopt to inform the decisions referred to letters 'b' to 'e', paragraph 5, of Article 24 of Law 133/2016. Without prejudice to the valuer's independence, the Resolution Authority may consult with the valuer in order to identify the range of resolution actions being considered by the Resolution Authority, including actions contained in the resolution plan or, if different, any proposed resolution scheme.

3. To ensure a fair, prudent and realistic valuation, the valuer shall, where appropriate and in consultation with the Resolution Authority, present separate valuations that reflect the impact of a sufficiently diverse range of resolution actions.
4. The valuer shall ensure that when the resolution tools are applied or when the power to write-down or convert relevant capital instruments is exercised, any losses on the assets of the bank are fully recognised under scenarios that are relevant to the ranges of resolution actions being considered.
5. Where the values of the valuation diverge significantly from the values presented by the bank in the financial statements, the valuer shall use the assumptions of that valuation, to inform the adjustments to the assumptions and to the accounting policies necessary for the preparation of an updated balance sheet required under letter 'a', paragraph 6 of Article 24, of Law No. 133/2016, in a way consistent with the applicable accounting framework. As regards losses identified by the valuer which cannot be recognised in the updated balance sheet, the valuer shall specify the amount, describe the reasons underlying the determination of the losses and the likelihood and time horizon of their occurrence.
6. Where capital instruments or other liabilities are converted to equity, a valuation shall provide an estimate of the post-conversion equity value of new shares transferred or issued as consideration to holders of converted capital instruments or other creditors. That estimate shall form the basis for the determination of the conversion rate or rates pursuant to Article 37 of Law 133/2016.

Article 19

Selection of the measurement basis

1. In selecting the most appropriate measurement basis or bases, the valuer shall take into account the range of resolution actions to be examined according to paragraph 2, Article 18 of this Regulation.
2. The valuer shall determine the cash flows that the bank can expect on the basis of fair, prudent and realistic assumptions from existing assets and liabilities following adoption of the examined resolution action or actions, discounted at an appropriate rate as described in paragraph 7.
3. Cash flows shall be determined at the appropriate level of aggregation, ranging from individual assets and liabilities to portfolios or businesses, with due consideration to differences in the risk profiles.
4. Where the resolution actions referred to paragraph 2 of Article 18, require that assets and liabilities are to be retained by a bank that continues to be a *going concern* institution, the valuer shall use the hold value as the appropriate measurement basis. The hold value may, if considered fair, prudent and realistic, anticipate a normalisation of market conditions.
5. The hold value shall not be used as the measurement basis where assets are transferred to an asset management vehicle pursuant to Article 29 of Law No. 133/2016 or to a bridge bank

pursuant to Article 28 of that Law, or where a sale of business tool pursuant to Article 26 of that Law is used.

6. Where the resolution actions referred to paragraph 2 of Article 18, envisage the sale of assets the expected cash flows shall correspond to the disposal values foreseen for the expected disposal horizon.
7. The discount rates shall be determined having regard to the timing of cash flows, risk profile, financing costs and market conditions as appropriate to the asset or liability being measured, the disposal strategy considered and the bank's post-resolution financial position.

Article 20

Specific factors relating to the estimation and discounting of expected cash flows

1. For the purpose of estimating cash flows, the valuer shall apply expert judgement in determining key characteristics of the assets or liabilities being measured. The valuer shall also apply expert judgement in determining how the continuation, potential renewal or refinancing, run-off or disposal of those assets or liabilities, as envisaged in the examined resolution action, affect those cash flows.
2. Where the resolution action envisages a bank holding an asset, maintaining a liability, or continuing a business, the valuer may take into account factors potentially affecting future cash flows, including the following:
 - a. changes in assumptions or expectations, as compared to those prevailing as of the valuation date, consistent with long-term historical trends and a reasonable horizon consistent with the contemplated holding period of assets or for the recovery of the bank; or
 - b. additional or alternative valuation bases or methodologies that are considered appropriate by the valuer and consistent with this Regulation , including in the context of assessing the post-conversion equity value of shares.
3. As regards groups of assets and liabilities or businesses envisaged to be run off, the valuer shall take into account workout costs and benefits.
4. Where an bank's situation prevents it from holding an asset or continuing a business, or where the sale is otherwise considered necessary by the Resolution Authority to achieve the resolution objectives, the expected cash flows shall be referenced to disposal values expected within a given disposal period.
5. The disposal value shall be determined by the valuer on the basis of the cash flows, net of disposal costs and net of the expected value of any guarantees given, that the bank can reasonably expect in the currently prevailing market conditions through an orderly sale or transfer of assets or liabilities. Where appropriate, having regard to the actions to be taken under the resolution scheme, the valuer may determine the disposal value by applying a reduction for a potential accelerated sale discount to the observable market price of that sale

or transfer. To determine the disposal value of assets which do not have a liquid market, the valuer shall consider observable prices on markets where similar assets are traded or model calculations using observable market parameters, with discounts for illiquidity reflected as appropriate.

6. The valuer shall have regard to factors that might affect disposal values and disposal periods, including the following:
 - a. the disposal values and disposal periods observed in similar transactions, adequately adjusted to take into account differences in the business model and in the financial structure of the parties to those transactions;
 - b. advantages or disadvantages of a particular transaction that are specific to the parties involved or to a subset of market participants;
 - c. particular attributes of an asset or business that may only be relevant to a potential purchaser, or to a subset of market participants;
 - d. the likely impact of expected sales on the bank's franchise value.
7. When assessing the value of businesses for purposes of the use of the sale of business or of the bridge bank tool, the valuer may take into account reasonable expectations for franchise value. Such expectation for franchise value shall include that resulting from a renewal of assets, from a refinancing of an open portfolio, or from a continuation or resumption of business in the context of the resolution actions.
8. A valuer assessing that no realistic prospect for the disposal of an asset or business can reasonably be expected, shall not be required to determine the disposal value, but shall estimate the related cash flows on the basis of the relevant prospects for continuation or run-off. This provision shall not apply to the asset separation tool or to the sale of business tool.
9. For parts of a group of assets or of a business that are likely to be liquidated under ordinary insolvency procedures, the valuer may consider the disposal values and disposal periods observed in auctions involving assets of a similar nature and condition. The determination of expected cash flows shall take into account illiquidity, the absence of reliable inputs for the determination of disposal values, and the resulting need to rely on valuation methodologies based on unobservable inputs.

Article 21

Provisional valuation

1. The Resolution Authority or the valuer may conduct a provisional valuation pursuant to paragraphs 2 and 8 of Article 24 of Law 133/2016, which is carried out in accordance with the provisions referred to paragraphs 1, 3, 5 and 6 of Article 24 of this Law, as far as possible, considering the emergency circumstances of the action and other circumstances justifying the conduct of this valuation.

2. The Resolution Authority or the valuer shall include a buffer for covering additional losses in the provisional valuation of a bank's assets and liabilities, if such losses can be expected, based on known facts and circumstances.
3. Additional buffers for covering losses are determined on the basis of widely recognized standards used to determine the value of assets, where data on losses designated for one type of asset may be applied to other types of assets with possible adjustments.

Article 22

Methodology for calculating and including a buffer for additional losses

1. To address the uncertainty of provisional valuations conducted in accordance with letters 'b' to 'e', paragraph 5, of Article 24 of Law No. 133/2016, the Resolution Authority or the valuer shall include a buffer with a view to reflecting in the valuation facts and circumstances supporting the existence of additional losses of uncertain amount or timing. In order to avoid double counting of uncertainty, the assumptions supporting the calculation of the buffer shall be adequately explained and justified by the valuer.
2. In order to determine the size of the buffer, the Resolution Authority or the valuer shall identify factors that may affect expected cash flows as a result of resolution actions likely to be adopted.
3. For the purposes of paragraph 2, the Resolution Authority or the valuer may extrapolate losses estimated for a part of the bank's assets to the remainder of the bank's balance sheet. Where available, average losses estimated for assets of peer competitors may also be extrapolated, subject to the necessary adjustments for differences in the business model and financial structure.

CHAPTER VI

VALUATION AFTER RESOLUTION

Article 23

General principles

1. For the purposes of determining the treatment of shareholders and creditors under normal insolvency proceedings, the valuation shall only be based on information about facts and circumstances which existed and could reasonably have been known at the resolution decision date which, had they been known, would have affected the measurement of the assets and liabilities of the bank at that date.
2. For purposes of determining the actual treatment of shareholders and creditors in resolution, the valuer shall rely on available information concerning facts and circumstances existing as of the actual treatment date or dates at which shareholders and creditors receive compensation.

3. The reference date of the valuation shall be the resolution decision date, which may differ from the actual treatment date. Insofar as the valuer deems the impact of any discounting of the proceeds to be negligible, the undiscounted proceeds at the date the resolution action has been implemented may be directly compared with the discounted amount of hypothetical proceeds that shareholders and creditors would have received had the bank entered normal insolvency proceedings at the resolution decision date.

Article 24

Inventory of assets and claims

1. The valuer shall establish an inventory of all identifiable and contingent assets owned by the bank. Such inventory shall include assets for which the existence of associated cash flows is demonstrated or can reasonably be expected.
2. A list of all claims and contingent claims against the bank shall be made available to the valuer. That list shall classify all claims and contingent claims according to their priority levels in normal insolvency proceedings. The valuer shall be able to enter into arrangements for specialist advice or expertise as regards the consistency of the ranking of claims with the applicable insolvency law.
3. Encumbered assets and claims secured by those assets shall be identified separately by the valuer.

Article 25

Steps of the valuation

1. For the purposes of determining whether a difference in treatment as referred to paragraph 2, Article 57 of Law No. 133/2016 exists the valuer shall assess:
 - a. the treatment that shareholders and creditors in respect of which resolution actions have been effected, or the relevant deposit guarantee scheme, would have received had the bank entered normal insolvency proceedings at the resolution decision date, disregarding any provision of extraordinary public financial support;
 - b. the value of the restructured claims following the application of the bail-in tool or other resolution powers and tools, or of other proceeds received by shareholders and creditors as at the actual treatment date or dates, discounted back to the resolution decision date if deemed necessary to enable a fair comparison with the treatment referred to in letter 'a';
 - c. whether the outcome of the treatment in letter 'a' exceeds the outcome of the value referred to in letter 'b' for each creditor in accordance with the priority levels in normal insolvency proceedings as identified according to Article 24.

Article 26
Determination of the treatment of shareholders and creditors under normal insolvency proceedings

1. The methodology for conducting the valuation pursuant to letter ‘a’ of Article 25 shall be limited to determining the discounted amount of expected cash flows under normal insolvency proceedings.
2. Expected cash flows shall be discounted at the rate or rates reflecting, as appropriate, the timing associated with expected cash flows, prevailing circumstances as of the resolution decision date, risk-free interest rates, risk premia for similar financial instruments issued by similar entities, market conditions or discount rates applied by potential acquirers and other relevant characteristics of the element or elements being valued (‘relevant discount rate’). Such relevant discount rate shall not apply where particular rates, if relevant for the purposes of the valuation, are specified in applicable insolvency law or practice.
3. The valuer shall take the following into account in the determination of the discounted amount of expected cash flows under normal insolvency proceedings:
 - a. applicable insolvency law and usual insolvency practice in the relevant jurisdiction, which may influence factors such as the expected disposal period or recovery rates;
 - b. reasonably foreseeable administration, transaction, maintenance, disposal and other costs which would have been incurred by an administrator or insolvency practitioner, as well as financing costs.
 - c. the information on recent past insolvency cases of similar entities, where available and relevant.
4. For assets traded in an active market, the valuer shall use the observed price, except where specific circumstances hamper the marketability of the assets of the bank, such as concentration, saturation and depth of the market.
5. For assets not traded in an active market, the valuer shall consider a number of factors when determining the amount and timing of expected cash flows, including:
 - a. prices observed in active markets where similar assets are traded;
 - b. prices observed in insolvency proceedings or otherwise distressed transactions involving assets of a similar nature and condition;
 - c. prices observed in transactions involving the sale of business or the transfer to a bridge bank or an asset management vehicle in a resolution context relating to similar entities;
 - d. the likelihood of an asset generating net cash inflows under normal insolvency proceedings;
 - e. expected market conditions within a given disposal period, including market depth and the ability of the market to exchange the relevant volume of assets within that period; and

- f. the length of such disposal period shall reflect the implications of the applicable insolvency law and proceedings, including the expected length of the liquidation process, or the characteristics of the relevant assets.
6. The valuer shall consider whether the financial condition of the bank would have affected the expected cash flows, including through restrictions on the administrator's ability to negotiate terms with potential purchasers.
7. Where possible, and subject to any applicable provision of the relevant insolvency regime, the cash flows shall reflect the contractual, statutory, or other legal rights of creditors or normal insolvency practices.
8. The hypothetical proceeds resulting from the valuation shall be allocated to shareholders and creditors in accordance with their priority level under the applicable insolvency law, as provided in Article 25.
9. For the purpose of determining any unsecured amount of derivatives claims in insolvency, the valuer shall apply methodologies set out in Chapter VII of this Regulation, to the extent consistent with normal insolvency law and practice.

Article 27

Determination of the actual treatment of shareholders and creditors in resolution

1. The valuer shall identify all claims outstanding after the write-down or conversion of capital instruments and the application of any resolution actions, and shall assign those claims to the legal and natural persons who were the bank's shareholders and creditors at the resolution decision date. Except where the legal and natural persons who were the bank's shareholders and creditors at the resolution decision date receive cash compensation as a result of the resolution, the valuer shall determine their actual treatment in accordance with this Article.
2. Where the legal and natural persons who were the bank's shareholders and creditors at the resolution decision date receive equity compensation as a result of the resolution, the valuer shall determine their actual treatment by providing an estimate of the overall value of shares transferred or issued as consideration to the holders of converted capital instruments or to the bailed-in creditors.
3. For shares referred to in paragraph 2, the estimate required in that paragraph may be based on the assessed market price resulting from generally accepted valuation methodologies.
4. Where the legal and natural persons who were the bank's shareholders and creditors at the resolution decision date receive debt compensation as a result of resolution, the valuer shall determine the actual treatment by taking into account factors such as the changes in contractual

cash flows that result from the write-down or conversion, or the application of other resolution actions, as well as the relevant discount rate.

5. For any outstanding claim, the valuer may take into account, where available and together with the factors described in paragraphs 2 and 3, prices observed in active markets for the same or similar instruments issued by that bank under resolution or other similar entities.

Article 28

Valuation report

The valuer shall prepare a valuation report to the Resolution Authority which shall include at least the following elements:

- a. a summary of the valuation including a presentation of valuation ranges and sources of valuation uncertainty;
- b. an explanation of the key methodologies and assumptions adopted, and how sensitive the valuation is to these choices;
- c. an explanation, where feasible, why the valuation differs from other relevant valuations, including the resolution valuations conducted in accordance with Chapter III or other regulatory or accounting valuations.

CHAPTER VII

VALUATION OF DERIVATIVES

Article 29

Comparison between the destruction in value that would arise from the close-out and the bail-in potential of derivative contracts

1. For the purpose of letter 'c', paragraph 5, Article 36, of Law No. 133/2016, the Resolution Authority shall compare the following:
 - a. the amount of losses that would be borne by the derivative contracts in a bail-in, obtained by multiplying:
 - i. the share, within all equally ranked liabilities, of liabilities arising from the derivative contracts determined as part of the valuation under Article 24 of Law

No. 133/2016 and not falling within the exclusions from bail-in pursuant to paragraph 2, Article 31 of that Law; by

- ii. the total losses expected to be borne by all liabilities ranking equally to derivatives, including the derivative liabilities stemming from the close-out;

with

- b. the destruction in value based on an assessment of the amount of the costs, expenses, or other impairment in value that is expected to be incurred as a result of the close-out of the derivative contracts, and obtained by calculating the sum of the following elements:
 - i. the risk of an increased counterparty close-out claim arising from re-hedging costs expected to be incurred by the counterparty, by taking into account the bid-offer, mid-to-bid or mid-to-offer spreads in line with letter 'b' paragraph 2, Article 33 ;
 - ii. the cost expected to be incurred by the institution under resolution in establishing any comparable derivative trades considered necessary in order to re-establish a hedge for any open exposure or in order to maintain an acceptable risk profile in line with the resolution strategy. The establishment of a comparable derivative trade may be achieved by taking into consideration initial margin requirements and prevailing bid-offer spreads;
 - iii. any reduction to franchise value arising from the close-out of derivative contracts, including any valuation impairment for other or underlying assets that are linked to the derivative contracts being closed out, and any impact on funding costs or income levels;
 - iv. any precautionary buffer against possible adverse implications from close-out, such as errors and disputes in respect of transactions or collateral exchange.
2. The comparison under paragraph 1 shall be made before a decision to close-out is taken, as part of the valuation to inform decisions about resolution actions required under Article 24 of Law No. 133/2016. The comparison shall follow the requirements set out in this Regulation.

Article 30

Communication of the decision to close out

1. Prior to exercising the write-down and conversion powers in relation to liabilities arising from derivative contracts, the Resolution Authority shall communicate the decision to close out contracts pursuant to letter 'g', paragraph 1, Article 47, of Law No. 133/2016 to the counterparties to those contracts.
2. The decision to close out shall take effect immediately, or at a later close-out date and time as specified in the communication.

3. In the decision referred to in paragraph 1, the Resolution Authority shall specify a date and time by which counterparties may provide evidence to the Resolution Authority of commercially reasonable replacement trades for the purpose of determining the close-out amount pursuant to paragraph 1 of Article 33. The counterparty shall also provide to the resolution authority a summary of any commercially reasonable replacement trades.
4. The Resolution Authority may change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades. Any decision to change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades shall be communicated to the counterparty.
5. In the decision referred to in paragraph 1, the Resolution Authority may specify the criteria it intends to apply when assessing whether replacement trades are commercially reasonable.

Article 31 **Role of the netting agreement**

For contracts subject to a netting agreement, the valuer shall determine, in accordance with Articles 29, 32, and 33 of this Regulation, a single amount which the institution under resolution has the legal right to receive or the legal obligation to pay as a result of the close-out of all the derivative contracts in the netting set, as defined in the netting agreement.

Article 32 **Valuation principle for early termination amount**

1. The valuer shall determine the value of liabilities arising from derivative contracts as an early termination amount calculated as the sum of the following amounts:
 - a. unpaid amounts, collateral or other amounts due from the institution under resolution to the counterparty, less unpaid amounts, collateral and other amounts due from the counterparty to the institution under resolution on the close-out date;
 - b. a close-out amount covering the amount of losses or costs incurred by derivative counterparties, or gains realised by them, by replacing or obtaining the economic equivalent of material terms of the terminated contracts and the option rights of the parties in respect of those contracts.
2. For purposes of paragraph 1, unpaid amounts means, in respect of closed-out derivative contracts, the sum of the following:
 - a. amounts that became payable on or prior to the close-out date and which remain unpaid on that date;
 - b. an amount equal to the fair market value of the asset which was required to be delivered for each obligation of the derivative contracts which was required to be

settled by delivery on or prior to the close-out date and which has not been settled as at the close-out date;

- c. amounts in respect of interest or compensation accrued during the period from the date on which relevant payment or delivery obligations fell due through to the close-out date.

Article 33

Determination of the close-out amount

1. Where a counterparty has provided evidence of commercially reasonable replacement trades within the deadline set out in paragraph 3, Article 30 of this Regulation, the valuer shall determine the close-out amount at the prices of those replacement trades.
2. Where a counterparty has not provided evidence of any replacement trades within the deadline set out in paragraph 3, Article 30 of this Regulation, where the valuer concludes that the communicated replacement trades were not concluded on commercially reasonable terms, or where paragraph 2, Article 34 of this Regulation, applies, the valuer shall determine the close-out amount on the basis of the following:
 - a. the mid-market end-of-day prices in line with the business-as-usual processes within the institution under resolution at the date determined pursuant to paragraph 2, Article 11 of this Regulation;
 - b. the mid-to-bid spread or mid-to-offer spread, depending on the direction of the netted risk position;
 - c. adjustments to the prices and spreads mentioned in letter 'a' and 'b' where necessary to reflect the liquidity of the market for the underlying risks or instruments and the size of the exposure relative to market depth, as well as possible model risk.
3. With regard to intra-group liabilities, the valuer may establish the value at mid-market end-of-day prices as referred to in letter 'a' of paragraph 2, without regard to letters 'b' and 'c' of paragraph 2, where the resolution strategy would imply re-hedging the terminated transactions via another intra-group derivative transaction or group of transactions.
4. For determining a value of the close-out amount pursuant to paragraph 2, the valuer shall consider a full range of available and reliable data sources and may rely on observable market data or theoretical prices generated by valuation models aimed at estimating values, including the following sources of data:
 - a. data provided by third parties, such as observable market data or valuation parameters data and quotes from market-makers;
 - b. for standardised products, valuations generated by the valuer's own systems;

- c. data available within the institution under resolution, such as internal models and valuations including independent price verifications;
 - d. data provided by counterparties other than evidence of replacement trades communicated pursuant to paragraph 3, Article 30 of this Regulation, including data on current or previous valuation disputes with regard to similar or related transactions and quotes;
 - e. any other relevant data.
5. For the purpose of letter 'b', paragraph 2, the Resolution Authority may instruct the institution under resolution to perform an updated independent price verification as at the reference point in time determined pursuant to paragraph 2, Article 11 using end-of-day information available on the close-out date.

Article 34
Early determination of the value of derivative liabilities

1. The valuer shall determine the value of derivative liabilities as set out in paragraph 2, Article 11 of this Regulation.
2. The valuer may, as part of a provisional valuation carried out pursuant to paragraph 8, Article 24 of Law No. 133/2016 determine the value of liabilities arising from derivatives earlier than at the point in time determined pursuant to paragraph 1. Such early determination shall be made on the basis of estimates, relying on the principles laid down in Article 32 and Article 33 of this Regulation, and on data available at the time of the determination (valuation).
3. Where the valuer carries out an early determination pursuant to paragraph 2, the resolution authority may at any time request the valuer to update the provisional valuation to take into account relevant observable market developments or evidence of commercially reasonable replacement trades concluded at the point in time determined pursuant to paragraph 1. These developments or evidence, where available by the date and time specified pursuant to paragraph 2 of Article 30, shall be taken into account in the ex post definitive valuation carried out pursuant to paragraph 10, Article 24 of Law No. 133/2016.

CHAIRMAN OF THE SUPERVISORY COUNCIL

Gent SEJKO