

**REPUBLIC OF ALBANIA**

**LAW  
NO. 133/2016**

**ON THE RECOVERY AND RESOLUTION OF BANKS IN THE REPUBLIC OF  
ALBANIA<sup>1</sup>**

**CHAPTER I  
GENERAL PROVISIONS**

**SECTION 1  
Subject Matter, scope and definitions**

**Article 1  
Subject Matter**

The subject matter of this law is:

- a) the determination of rules, procedures and tools for the recovery and resolution of banks and branches of foreign banks;
- b) the determination of powers and tasks of the resolution authority and the supervisory authority;
- c) the establishment, financing and use of the Resolution Fund, and also its management thereof.

**Article 2  
Scope**

The scope of this law is the establishment of the legal framework for the recovery and resolution of banks and branches of foreign banks in the Republic of Albania.

**Article 3  
Subjects**

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<sup>1</sup> This law partially approximates into the Albanian legislation the Directive 2014/59/EU of the European Parliament and of the European Council dated 15 May 2014 on establishing a framework for the recovery and resolution of credit banks and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the European Council.

The subjects of this law are banks and branches of foreign banks, licensed by the Bank of Albania, in accordance with the legislation in force.

#### **Article 4** **Definitions**

In this law the following definitions shall apply:

1. "**Administrator**" shall be the members of the management bodies.
2. "**Shareholders**" shall be the persons who hold shares or other instruments of ownership.
3. "**Deposits Insurance Agency**" shall have the same meaning as defined in the legislation in force on deposits insurance.
4. "**Cancellation**" shall be the termination of any financial claim and any ownership title over shares or debt instruments
5. "**Bank**" shall have the same meaning as defined in the legislation in force on banks in the Republic of Albania.
6. "**Influencing bank**" shall have the same meaning as defined by the legislation in force on banks in the Republic of Albania.
7. "**Bridge bank**" shall be a legal person that meets the requirements set out in Article 28 of this Law.
8. "**Consolidated basis**" shall be the consolidation of financial statements as defined in the legislation in force on banks in the Republic of Albania.
9. "**Branch of the bank**" shall have the same meaning as defined by the legislation in force on banks in the Republic of Albania.
10. "**Branch of the foreign bank**" shall have the same meaning as defined in the legislation in force on banks in the Republic of Albania.
11. "**Derivative**" shall be the tool as defined by the legislation in force on securities.
12. "**Secured liabilities**" shall be the liability where the right of the creditor to payment of the price or other form of performance of obligations is secured by a charge, pledge or lien, or financial collateral agreements including liabilities arising from repurchase transactions and other title transfer collateral agreements on the transfer of the title to the property. .
13. "**Eligible liabilities**" shall be the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of a bank and which are not excluded from the scope of the bail-in tool by virtue of point 2 of article 31.
14. "**Covered deposits**" shall have the same meaning as defined by the legislation in force on deposits insurance.
15. "**Eligible deposits**" shall have the same meaning as defined by the legislation in force on deposits insurance.

16. **“Depositor”** shall have the same meaning as defined by the legislation in force on deposits insurance.
17. **“Subsidiary”** shall have the same meaning as defined by the legislation in force on banks in the Republic of Albania.“
18. **“Critical functions”** shall be the activities, services or the operations of a bank, the discontinuance of which can bring the disruption of services that are essential to the real economy or disrupt financial stability due to the size, market share that it represents, its external and internal interconnectedness, complexity or cross-border activities, with particular regard to the inability of substitution of those activities, services or operations in the market;.
19. **“Deposits compensation fund in the bank”** shall have the same meaning as defined by the legislation in force on deposits insurance.
20. **“Banking group”** shall have the same meaning as defined by the legislation in force on banks in the Republic of Albania.
21. **“Cross-border group”** is a banking group that includes entities founded in more than one country.;
22. **“Common Equity Tier 1 instruments”** shall be the capital instruments as set out in Bank of Albania sub legal acts.;
23. **“Additional Tier 1 instruments”** shall be the capital instruments as set out in Bank of Albania sublegal acts.;
24. **“Tier 2 instruments”** shall be the capital instruments or subordinated loans as set out in Bank of Albania regulations.
25. **“Instruments of ownership”** shall be the shares of a bank, or instruments that are converted into or -give the right to acquire shares and also tools that represent an interest over the shares or other instruments of ownership.
26. **“Systemic crisis”** shall be the disruption of the activity of the financial system, -with the potential to have serious negative consequences for the financial market and the real economy.
27. **“Regulatory capital”** is the sum of Tier 1 capital and Tier 2 capital as defined by the legislation in force on banks in the Republic of Albania.
28. **“State Aid Commission”** shall be the decision -making authority for state aid control as set out on the Law “On state aid”.
29. **“Transfer powers”** shall be the powers specified Article 47, paragraph 1, letters “ç” or “d” to transfer share, other instruments of ownership, debt instruments, assets, rights or liabilities or any combination of the above by a bank under resolution to a recipient.
30. **“Write-down or conversion powers”** shall be the powers referred to in Article 45 and Article 47, paragraph 1, letters "dh", "e", "ë", "h" of this Law.
31. **“Affected creditor”** shall be the creditor whose claim is related to an liabilities that is reduced or converted in shares or other instruments of ownership by the exercise of the write down or conversion power in the use of the bail-in tool;

32. "**Mutual failure clause**" is a contractual clause, which is implemented in the cases when there are two or more contractual relationships between the parties and the failure of obligations arising from one contract shall be considered as a failure of obligations of the other contract.
33. "**Financial contracts**" the following contracts and agreements:
- a) securities contracts, including:
    - i. contracts for the purchase, sale or loan of a security, a group or index of securities;
    - ii. options on a security or group or index of securities;
    - iii. repurchase or reverse repurchase transactions on any such security, group or index;
  - b) commodities contracts, including:
    - i. contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - ii. options on a commodity, group or index of commodities;
    - iii. repurchase or reverse repurchase transactions on any such commodity, group or index;
  - c) future and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - d) swap agreements, including:
    - i. swaps and options relating to interest rates; spot or other foreign exchange agreements; currency agreements; an equity index or equity; a debt index or debt; commodity indexes or commodities;
    - ii. total return, credit spread or credit swaps;
    - iii. any agreements or transactions that are similar to an agreement referred to in letters "i" or "ii" which is the subject of recurrent dealing in the swaps or derivatives markets;
  - e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
  - f) master agreements for any of the contracts or agreements referred to in points (a) to (e).
34. "**Winding up**" is the process of returning into money the assets of the bank, with the intent to distribute it to the creditors in accordance with the order of repayment obligations.
35. "**Recipient**" shall be the entity to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of these items are transferred from a bank under resolution.
36. "**Title transfer financial collateral agreement**" shall have the same meaning as defined by the legislation in force on the payment system.

37. "**Netting agreement**" shall be an agreement under which a number of claims or obligations can be converted into a single obligation, including provisions' as defined by the legislation in force on the payment system and the dispositions close-out.
38. "**Set-off agreement**" shall be an agreement under which two or more due rights or debt obligations between the bank under resolution and a counterparty can be set off against each other.
39. "**Commodities**" shall be items specified in numbers, type and quantity, which can be delivered, including metals, minerals and their alloys, agricultural products and energy.
40. "**Resolution**" shall mean the process of implementation of resolution tools powers in order to achieve one or more of the resolution objectives referred to in Article 20 of the law.
41. "**Management bodies**" shall be the executive council and the directory as defined by the legislation in force on banks in the Republic of Albania.
42. "**Covered bond**" shall be an instrument issued from a bank with registered address in the Republic of Albania or abroad and that fulfils the condition that funds benefited from its sale are invested in assets, which secure the duly coverage of obligations deriving from this bond up until its maturity and which in case the issuer fails to fulfil the obligation, are used by giving priority to the bond owner for the reimbursement and payment of the principal and interest.
43. "**Compulsory insolvency proceedings**" shall be the proceedings defined by the legislation in force on banks in the Republic of Albania.
44. "**Deposit Insurance scheme**" shall have the same meaning as defined by the legislation in force on deposit insurance.
45. "**Group entity**" shall be the legal person that is part of banking group.
46. "**Debt instruments**" shall have the same meaning as defined by the legislation in force on securities.
47. "**Regulated market**" shall have the same meaning as defined by the legislation in force on securities.
48. "**Main Activity**" activities and associated services which represent material sources of revenue and profit or franchise value for a bank or for a group of which a bank forms part.
49. "**Resolution action**" shall be the application of a tool, or the exercise of resolution powers on a bank, pursuant to article 21 of this law.
50. "**Affected holder**" shall be the owner of instruments of ownership, which are cancelled or diminished by means of the power referred to in letter "h" of point 1 of article 47 of this law.

**SECTION 2**  
**Principles and responsible authorities**

**Article 5**  
**General principles**

1. When exercising its powers over the subjects of this law, the Bank of Albania in the quality of the Resolution Authority and supervisory authority considers the nature of the business, shareholding structure, legal form, risk profile, size and legal status, the interconnectedness to other banks and to the financial system in Albania, the scope and the complexity of their activities.
2. Legal provisions regulating the operation of banks shall apply to banks under resolution, unless otherwise provided in this law.
3. Legal provisions governing commercial companies shall be applied to the subjects of this law that are placed in resolution by the Resolution Authority, unless otherwise provided in this law.

**Article 6**  
**Responsible authorities**

1. The Bank of Albania is the Resolution Authority that exercises the resolution powers defined in this law.
2. The Bank of Albania is the supervisory authority which carries out its supervisory function pursuant to and in compliance with the legislation in force on banks in the Republic of Albania and this law.
3. The Bank of Albania exercises the supervisory function and resolution function through two different organisational units within the Bank of Albania, which have different reporting and dependence lines, by ensuring their independence in the respective decision-making. Employees of organisational units that exercise the supervision function and resolution function, cooperate effectively for designing, planning and implementation of the decisions for resolution.  
The Bank of Albania defines through a sub-legal act the manner of cooperation between these two units.
4. The Bank of Albania, in the quality of the Resolution Authority, informs the Ministry of Finance and State Aid Commission regarding the decision taken for resolution in a bank. In case the decision for resolution is associated with the use of public funds it is acted in accordance with the provisions of this law and the applicable law in force for managing the budget system in the Republic of Albania.
5. The Bank of Albania cooperates with the Deposit Insurance Agency for the preparation, planning and implementation of resolution decisions.

6. The Bank of Albania establishes the internal bodies and directors of the organisational units which issue the individual administrative acts in compliance to the powers of the Bank of Albania pursuant to this law.

## **CHAPTER II**

### **PREPARATION OF RECOVERY AND RESOLUTION PLANS**

#### **SECTION 1**

#### **Recovery Planning**

##### **Article 7**

##### **Recovery plans**

1. Every bank shall draw up and update a recovery plan providing for measures to be taken by the bank in order to restore its financial position following a significant deterioration of its financial condition.
2. The recovery plans are updated at least annually or after any change in their organisational structure or the bank's financial position, that may have material effects on the application of the recovery plans.
3. When the Supervisory Authority deems it necessary, it shall request the bank to update its recovery plan more frequently.
4. In the drafting of recovery plans, banks should not take into consideration the possibility for extraordinary public financial support.
5. Recovery plan shall be approved by the board of directors of the bank and shall be presented for evaluation to the Supervisory Authority.
6. The Supervisory Authority, when it shall consider it reasonable, shall allow some banks to submit simplified recovery plans.
7. The Supervisory Authority shall define in a sub-legal act the content of recovery plans and simplified recovery plans, the manner and timeframe for their submission and updates.

##### **Article 8**

##### **Assessment of recovery plan**

1. The Supervisory Authority shall, within six months from the date of submission of recovery plan, assess whether:
  - a) this plan meets the requirements provided in this law and in the bylaws for its implementation;

- b) the implementation of the measures proposed in the plan creates the possibility for the bank to maintain or to restore the financial position of the bank or group;
  - c) the plan and the alternative solutions within the plan are likely to be implemented quickly and effectively in situations of financial stress, avoiding any significant adverse effect on the financial system stability.
2. When assessing recovery plans, the Supervisory Authority shall take into consideration the appropriateness of the bank's capital and funding structure to the level of complexity of the organisational structure and the risk profile of the bank.
  3. The Supervisory Authority, when it assesses that there are deficiencies in the recovery plan, or material impediments to its implementation shall require the bank to submit, within two months, a revised plan demonstrating the treatment of those deficiencies or impediments. This term may be extended by one month with the approval of the Supervisory Authority,  
The bank has the right to express to the Supervisory Authority its opinion in relation to the request to revise the recovery plan.
  4. If the revised plan shall not adequately address the deficiencies and impediments, the supervisory authority shall direct the bank to make specific changes to the plan.
  5. If the bank fails to submit a revised recovery plan, or if the Supervisory Authority shall determine that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, even after a direction provided in paragraph 4 of this Article, the Supervisory Authority shall require the bank to identify within a reasonable timeframe changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.
  6. The Supervisory Authority, if the bank fails to identify the changes according to paragraph 5 of this Article, within the timeframe set by it, or if it assesses that the actions proposed by the bank would not adequately address the deficiencies or impediments, it may order the bank to:
    - (a) reduce the risk profile of the bank, including liquidity risk;
    - (b) enable timely recapitalisation measures for the bank;
    - (c) review the bank's strategy and structure of its core activities;
    - (d) make changes to the funding strategy so as to improve the resilience of the core activities and critical functions;
    - (e) make changes to the governance structure of the bank.
  7. The order of the Supervisory Authority, pursuant to paragraph 6 of this Article, shall be notified to the bank in writing.
  8. Any natural or legal person who claims that its legal rights or interests have been affected by the above measures, has the right of appeal pursuant to Articles 84 and 85 of this Law.
  9. The Supervisory Authority establishes through a sub-legal act the minimal criteria on which the assessment of recovery plans shall be carried out.



**Article 9**  
**Banking group recovery plans**

1. The influencing bank of a banking group shall draft the banking group recovery plan, which provides measures to be taken at group level in order to restore its financial position following a significant deterioration of the financial condition of the group.
2. The group recovery plans shall aim to achieve the stabilisation of the banking group as a whole, or of any entity of the banking group, when it is in a situation of financial distress so as to address or remove the causes of the distress and restore the financial position of the banking group or of the entity in question, taking at the same time into account the financial position of the other banking group entities.
3. The banking group recovery plans, and any plan drafted for an individual bank, shall also include, where applicable, regulatory measures within the banking group, according to a relevant agreement.
4. The banking group recovery plans shall identify whether there are or not obstacles to the implementation of recovery measures within the banking group, including at the level of individual banks covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of funds or the repayment of liabilities or assets within the banking group.
5. The Supervisory Authority, if it deems it necessary, may notify on the banking group recovery plans the other foreign or domestic supervisory authorities as well, provided that the requests for confidentiality and reciprocity of the exchange and managing of the information are respected.
6. The banking group recovery plans shall be assessed and approved by the board of directors of the influencing bank and shall be presented for assessment and evaluation to the Supervisory Authority.

**Article 10**  
**Assessment of banking group recovery plans**

1. The Supervisory Authority of the banking group cooperates with the other supervisory authorities of the group entities and the significant branches, during the review of the banking group recovery plan and assess the extent to which it satisfies the requirements and criteria laid down in Articles 8 and 9 of this Law.
2. The assessment of group recovery plans are made in accordance with the procedure established in Article 8 of this Law and shall take into account the potential impact of the recovery measures on the financial stability of all the states where the group exercises its activity.

3. The Supervisory Authority notifies the influencing bank of the banking group for the results of the assessment of the group recovery plan and may also notify other supervisory authorities of the entities of the group over these results.

**Article 11**  
**Recovery plan indicators**

1. Recovery plans shall include a list of indicators placed by the banks, which shall identify the moments on which appropriate decisions envisaged by these plans may be taken.
2. When making the assessment of recovery plans, the Supervisory Authority shall approve such indicators, which may be of a qualitative or quantitative nature relating to the bank's financial position and shall be easily monitored.
3. The banks shall ensure in an appropriate manner the regular monitoring of the indicators according to their internal procedural and regulatory acts.
4. The banks shall act under their recovery plans even when the relevant indicator has not been met in the cases where the management body of the bank considers this to be appropriate in the circumstances, or shall refrain from acting according to the recovery plans even when the indicators are met when the management body of the bank does not consider it to be appropriate in the circumstances.
5. The banks shall notify the supervisory authority in writing if it has taken or refrained from taking a measure provided under the recovery plan.
6. The Supervisory Authority shall establish through a sub-legal act the minimum quantitative and qualitative indicators which should be included in the recovery plans for banks.

**SECTION 2**  
**Resolution planning**

**Article 12**  
**Resolution plan**

1. The Resolution Authority shall draw up a resolution plan for each bank.
2. The resolution plan shall provide for the resolution actions that can be carried out by the Resolution Authority, if the conditions for resolution are met.
3. The resolution plan shall identify any material impediments to resolvability and outline relevant actions for how those impediments could be removed according to Article 15 of this Law.
4. The resolution plans shall be updated at least once a year or after every change of the bank's organizational structure, activity or financial position, as well as in case of other changes affecting the contents of the resolution plan and its applicability.

5. The bank shall provide to the Resolution Authority, all the necessary information and data required in the process of drawing up and updating the resolution plan.

The resolution plan sets out cases when the resolution tools and resolution powers shall be applied and this plan shall include minimally the following elements:

- a. a summary of the significant changes to the bank that have occurred after the latest resolution information was given;
  - b. a manner of how critical functions and core activities shall be legally and economically separated from other functions so as to ensure their continuity;
  - c. an estimation of the timeframe for executing each significant action of the plan;
  - d. an assessment of resolvability and the measures to remove impediments in accordance with Article 15 of this Law;
  - e. a description of the processes for determining the value and the possibility to sell the critical functions, core activities and assets of the bank;
  - f. the possibility of how the resolution tools and powers could be financed without considering any of the following:
    - i. extraordinary public financial support besides the use of the “Resolution Fund”;
    - ii. extraordinary liquidity assistance by the Bank of Albania; or
    - iii. liquidity assistance by the Bank of Albania offering non-standard conditions in terms of collateralisation, maturity or interest rate.
  - g. a detailed description of the different resolution strategies that can be applied according to the possible scenarios and the applicable timescales;
  - h. a description of the options for the continuity of operation of payments and clearing services and an assessment of the protection of the clients positions;
  - i. an analysis of the impact of the plan on the employees of the bank, and a description of envisaged procedures to consult with them during the resolution process;
  - j. a plan for communicating with the media and the public;
  - k. the minimum requirement for regulatory capital and eligible liabilities required pursuant to paragraph 1 of Article 32 of this Law, and a deadline to reach that level;
  - l. a description of essential operations and systems for continuing the functions of the bank;
  - m. opinions and comments of the bank in relation to the resolution plan.
6. Relevant scenarios including the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events. This plan shall not assume any of the following:
    - (a) extraordinary public financial support besides the use of the “Resolution Fund”;
    - (b) extraordinary liquidity assistance from the Bank of Albania as defined by the law on the Bank of Albania; or
    - (c) liquidity assistance from the Bank of Albania provided under non-standard conditions in terms of collateralisation, maturity and interest rate.

7. The resolution plan shall include as well an analysis of the manner and moment when the bank may present the request for using the financial instruments of the Bank of Albania and identifies those assets which would be expected to qualify as collateral.
8. The Resolution Authority shall require the opinion of the Deposit Insurance Agency for the resolution plans for the cases when the participation of the Agency is required, and shall send a copy of these plans as well as of any amendment thereof.
9. The content of the resolution plans shall be determined through a sub-legal act of the Resolution Authority.

### **Article 13**

#### **Banking group resolution plan**

1. The Resolution Authority shall draft the resolution plan for each banking group.
2. The banking group resolution plan shall :
  - a) set out the actions to be taken in relation to banking group entities;
  - b) be applied and exercised in a coordinated way to the banking group entities, including measures to facilitate the purchase by a third party of the banking group as a whole, or separate business lines that are delivered by the group entities, or particular group entities, and identify any potential impediments to resolution;
  - c) identify the necessary measures to facilitate resolution, considering the legal and economic separation of particular functions or business lines ;
  - d) set out any additional actions, that can be taken at the level of the banking group;
  - e) may take into consideration respective scenarios, including the fact that the event may occur for reasons related to the relevant banking group or may occur for reasons related to financial instability or system-wide events and also identify the financing of the group resolution actions, without assuming any of the following:
    - i. extraordinary public financial support besides the use of the “Resolution Fund”;
    - ii. extraordinary liquidity assistance by the Bank of Albania as defined by the law on Bank of Albania; or
    - iii. liquidity assistance by the Bank of Albania provided under non-standard conditions in terms of collateralisation, maturity and interest rate.
3. The Resolution Authority shall ask for the opinion of the Deposit Insurance Agency regarding the resolution plans where the intervention of the Agency is required and shall send to the Agency a copy of this plans and any amendments thereof.

### **Article 14**

#### **Requirement and procedure for banking group resolution plans**

1. The influencing bank in a banking group shall submit to the Resolution Authority the information that may be required on a group level in accordance with paragraph 5 of Article 12 of this Law to prepare the group-level resolution plan.

## **Article 15**

### **Assessment of the resolution plan and removal of impediments**

1. The Resolution Authority shall assess if the bank must enter into liquidation under compulsory insolvency proceedings or to resolve it by applying the different resolution tools and powers while avoiding to the maximum extent possible any significant adverse effect on the financial system.
2. The Resolution Authority shall conduct the assessment in accordance to paragraph 1 of this Article, without taking into consideration any of the following:
  - a) extraordinary public financial support besides the use of the “Resolution Fund”;
  - b) extraordinary liquidity assistance from the Bank of Albania; or
  - c) liquidity assistance provided from the Bank of Albania under non-standard conditions in terms of collateralisation, maturity and interest rate.
3. The assessment under paragraph 1 of this Article shall be made by the Resolution Authority and is an integral part of the resolution plan in accordance with Article 12 of this Law.
4. The Resolution Authority shall receive from the Deposit Insurance Agency data on the insured deposits that may be set off of the bank, as well as on the estimated costs regarding the process of setoff of these deposits.
5. Where the Resolution Authority shall notice that there are substantive impediments to the resolvability of a bank, it shall order the bank to submit, within four months, a proposal of possible measures to address or remove these impediments.
6. When the Resolution Authority shall assess that the measures proposed by the bank in accordance with paragraph 5 of this Article do not effectively reduce or remove the impediments to resolvability, it orders the bank to take any of the following measures within a provided period, accompanied by the relevant reasoning:
  - a) to revise intra-group financial support agreements or consider the conclusion of such agreement if it has not been concluded already, and/or enter into a service agreement either intra-group or with third parties to ensure the continuation of the critical functions;
  - b) to limit its maximal exposure entirely or partially;
  - c) to, report regularly or on a case by case basis, additional information that it requires;
  - d) to sell specific assets;
  - e) to limit or interrupt specific existing activities, or the sale of specific products of the bank;

- f) to make and/or enable appropriate organisational changes to the bank and/or any other entity of the banking group which is under the direct or partial control of the bank, so as to reduce complexity of the bank and/or group and ensure that critical functions may be separated from other functions in the resolution procedure;
  - g) to issue eligible liabilities in order to fulfil the requirements under Article 32 of this Law;
  - h) to take other measures to meet the minimum requirements for regulatory capital and eligible liabilities in accordance with Article 32 of this Law.
7. The order emitted in accordance with paragraph 6 of this Article, shall define the measures in compliance with the nature of the activity, the shareholder's structure, legal form, risk profile, the size and the legal status, as well as the complexity of the activity of the bank.
  8. The bank, within one month from the date of receipt of the order referred in paragraph 6 of this Article, shall submit to the Resolution Authority a plan for the implementation of the measures defined in this order.
  9. The resolvability assessment and the removal of impediments pursuant to this Article also shall be applied in the case of the assessment of a banking group resolution plan.
  10. Any natural or legal person who claims that its legal rights or interests have been affected by the measures defined in paragraph 6 of this Article, has the right of appeal pursuant to Articles 84 and 85 of this Law.

### **CHAPTER III INTRA GROUP FINANCIAL SUPPORT**

#### **Article 16 Intra-group financial support agreement**

1. The influencing bank or another entity of a banking group subject to consolidated supervision may enter into an agreement with other members of such banking group to provide financial support to any party of the agreement that meets the conditions for early intervention measures, pursuant to Chapter IV of this Law, subject to prior approval of the supervisory authority.
2. The intra-group financial support arrangement may be entered into only if at the moment of signing, based on the assessment of the respective supervisory authorities, none of the parties meets the conditions for early intervention.
3. Financial support pursuant to paragraph 1 of this Article may be given in the form of a loan, Insurances or as a combination of them, in one or more transactions between the beneficiary of the support and a third party.

4. The intra-group financial support agreement shall specify in particular the principles for the calculation of the consideration for any transaction provided by it, as well as the maximum amount for the provision of financial support.
5. The rights and obligations arising from the intra-group financial support agreement may not be transferred to third parties out of the banking group.
6. The supervisory authority shall establish through a sub-legal act the conditions for awarding the prior approval for the intra-banking-group financial support agreement.

## **CHAPTER IV EARLY INTERVENTION**

### **Article 17**

#### **Early intervention measures**

1. Where the Supervisory Authority assesses that the level of capital adequacy ratio of the bank approaches the minimum allowed level or there is the possibility that the bank is likely to breach the legal and regulatory requirements in the near future, due, inter alia, to its rapidly deteriorating financial condition, including deteriorating liquidity indicators, increasing level of non-performing loans or of concentration of exposures, it shall have the right, in addition to the supervisory measures defined in the legislation in force on banks in the Republic of Albania, to take one or more of the following early intervention measures:
  - a) request the management body to assess the situation and identify measures to overcome any identified problems, and draw up an action plan for their overcome;
  - b) request the bank's management body to implement one or more of the measures set out in the recovery plan and if the circumstances that caused the early intervention are different from the assumptions set out in the recovery plan, to request the bank to update the recovery plan and implement one or more of the measures set out in the updated recovery plan within a specific timeframe;
  - c) request the management body of the bank to convene a shareholders general assembly, or convene itself a meeting of the shareholders' general assembly, if the bank's managing board fails to do so, and in both cases it shall set the date, the agenda and propose the relevant decisions for adoption;
  - d) request the management body of the bank to draw up a plan for the negotiation on the restructuring of debt with the bank's creditors according to the recovery plan, when applicable;
  - e) request changes to the bank's business strategy, or the legal or operational structure;
  - f) obtain all the necessary information in order to update the resolution plan and prepare for the possibility of resolution and for valuation of the assets and liabilities of the bank in accordance with Article 24 of this Law.

2. Any natural or legal person who claims that its legal rights or interests have been affected by the measures provided in point 1 of this article has the right of appeal pursuant to Articles 84 and 85 of this Law.
3. The Supervisory Authority shall establish through a sub-legal act the conditions when the early intervention measures shall apply.

### **Article 18**

#### **Replacement of the administrators**

1. When the Supervising Authority shall ascertain that there is a significant deterioration of a bank's financial condition or violations with serious consequences of the legislation in force on banks in the Republic of Albania and of other rules or of the statute of the bank and in case the bank does not apply the measures defined in Article 17 of this Law, or these measures are not sufficient to remedy the bank's financial condition, it shall have the right to order the bank to remove one or some of the administrators of the bank, members of the management board and/or the directory, and to appoint new administrators.
2. New administrators shall be appointed in accordance with the provisions of the legislation in force on banks in the Republic of Albania and the requirements for their appointment.
3. The bank or the affected administrators shall have the right to appeal this order of the Resolution Authority pursuant to Articles 84 and 85 of this Law.

### **Article 19**

#### **Temporary administration**

1. Where the bank does not apply the order as provided in paragraph 1 of Article 18 of this Law, or when the replacement of administrators pursuant to Article 18 of this Law is deemed to be insufficient to remedy the bank's financial situation, the Supervisory Authority shall have the right to appoint one or more temporary administrators for the bank.
2. The Supervisory Authority, as a rule, may appoint any temporary administrators either to replace the management body of the bank temporarily or to temporarily work with the management body.
3. The decision referred to in paragraph 1 of this Article shall be defined the objectives and tasks of temporary administration, which aim to ascertaining the true financial condition of the bank, managing entire or part of the business with a view to preserving or restoring the financial position of the bank and/or safe and sound operation.



4. If the Supervisory Authority appoints the temporary administrator to work with the management body of the bank, it shall also specify at the time of such an appointment the role, duties and powers of the temporary administrator and any requirements for the management body of the bank to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions. The Supervisory Authority shall disclose the appointment of any temporary administrator that has the right to represent the bank before third parties.
5. A temporary administrator shall be appointed for a term not longer than a year. That term may only be extended if the supervisory authority assesses that the conditions defined in paragraphs 1 and 3 of this Article continue to be met. The Supervisory Authority may, at any time during the term of the temporary administrator, issue a decision to remove him, and may also change the administrator's powers and duties determined in the appointment decision.
6. A temporary administrator must meet the following requirements:
  - a) fulfil the conditions defined in the legislation in force on banks in the Republic of Albania and the sub-legal acts issued by the Bank of Albania for the administrators of the bank or foreign bank branch;
  - b) have a working experience at least 7 years as executive director of a bank, other financial institution or an authorised auditing company;
  - c) has not been convicted for a criminal offense;
  - d) must not be subject of an investigation for criminal offenses;
  - e) based on a court decision, must not be unable to exercise his duties towards the bank;
  - f) there is no conflict of interest with the bank, according to the legislation in force on banks in the Republic of Albania.
7. The Supervisory Authority, in the decision referred to in paragraph 1 of this Article, may stipulate that certain actions or specific measures taken by the temporary administrator or recommended to the management body shall be subject to the prior consent of the Supervisory Authority.
8. The temporary administrator shall submit to the Supervisory Authority reports on the financial condition of the bank and on the actions taken in the discharge of his duties at time intervals as established by the Supervisory Authority and at the end of his mandate.
9. The Supervisory Authority, based on the reports submitted by the temporary administrator, according to paragraph 8 of this Article, when it shall deem it necessary, shall order the latter to convene a general meeting of shareholders of the bank and request it the increase of capital.
10. The temporary administrator shall be obliged to convene a general meeting of the shareholders of the bank not later than 10 days after the receipt of the order of the Supervisory Authority.
11. When the capital increase is rejected or is not realized within 6 months of its increase, the temporary administrator shall inform the Supervisory Authority which takes the relevant

decisions in compliance with this Law and/or the legislation in force on banks in the Republic of Albania.

12. The decision of the Supervisory Authority on temporary administration, the appointment and removal of the temporary administrator, as well as the termination of temporary administration in a bank, shall be submitted in writing to the Deposit Insurance Agency.
13. The Supervisory Authority shall establish through sub-legal acts the conditions and manner of carrying out temporary administration.
14. The appointment of the temporary administrator pursuant to the provisions of this Article shall not prejudice the rights of the bank's shareholders in accordance with the legislation in force on traders and trading companies, to the extent that this shall not be in contradiction with the requirements of this Law.
15. The bank or the affected administrators have the right to appeal the appointment of the administrator or of the temporary administrator pursuant to Articles 84 and 85 of this Law.

## **CHAPTER V RESOLUTION**

### **SECTION 1**

#### **Objectives, conditions and general principles**

#### **Article 20**

#### **Resolution objectives**

1. The Resolution Authority shall choose the resolution tool that best achieves the objectives in accordance with the concrete conditions of the bank or the financial system in general.
2. The resolution objectives shall be:
  - a) to ensure the continuity of the critical functions of the bank;
  - b) to avoid every significant adverse effect on the stability of the financial system by preventing the dissemination of risks, including to market infrastructures, and protecting the discipline of the market;
  - c) to protect public funds by minimising the extraordinary public financial support;
  - d) to protect depositors insured by the Deposit Insurance Agency;
  - e) to protect funds and other assets of the clients.
3. When pursuing the resolution objectives pursuant to paragraph 2 of this Article, the Resolution Authority shall seek to reduce the cost of resolution and decline of the bank's value.

4. The objectives set out in paragraph 2 of this article have an equal significance and the Resolution Authority shall balance these objectives in an appropriate manner, in accordance with the circumstances of each individual case.

## **Article 21**

### **Conditions for initiating the resolution of the bank**

1. The Resolution Authority initiates the resolution of the bank when it shall establish that the following conditions are met:
  - a) the bank is considered to be close to a situation where it is likely that in the near future it would fail to fulfil its obligations;
  - b) there is no possibility that any other measure taken by the bank, the banking group or the shareholders of the bank, a supervisory or early intervention measure taken by the Supervisory Authority pursuant to the legislation in force on banks in the Republic of Albania or pursuant to this law, to restore the bank within a reasonable period in good financial conditions and within the supervisory indicators,
  - c) the bank's resolution is necessary in the public interest, as provided in paragraph 5 of this Article.
2. For the purposes of paragraph 1, letter “a” of this Article, a bank shall be deemed that it is likely that in the near future it would fail to fulfil its obligations, if at least one of the following conditions is met:
  - a) requirements for continuing to be licensed and fulfils the requirements for the withdrawal of its license by the Supervisory Authority, including, but not limited, the fact that the bank has incurred or is likely to incur losses that would absorb all or a significant amount of its capital;
  - b) the bank's assets are lower than its liabilities or are likely to be so in the near future;
  - c) the bank is or is likely that in the near future will be unable to pay its financial liabilities or other obligations as they fall due;
  - d) extraordinary public financial support is necessary as defined in Article 43 of this Law.
3. The public financial support, if given in the form of a temporary financial support to a bank in a healthy financial condition to protect the stability of the financial system, shall not be considered as a condition for the purposes paragraph 2, letter “d” of this Article. This public financial support is given pursuant to the conditions and procedures of the legislation in force. In any case the public financial support must not be used to absorb losses and on terms that confer a market advantage upon the bank and affect competition and also when neither of the conditions set out in paragraph 2, letters “a”, “b” and “c” of this Article and paragraph 3 of Article 45 of this Law, exist.
4. Resolution shall be deemed to be in the public interest, for the purposes of paragraph 1, letter “c” of this Article, if it is considered necessary for protecting financial stability and

for achieving one or more resolution objectives provided in Article 20 of this Law, which could not be achieved by placing the bank under compulsory insolvency proceedings.

5. The initiation of the resolution procedure shall not be conditional for taking early intervention measures.

## **Article 22**

### **Principles of resolution procedure**

1. Resolution shall be based on the following principles:
  - a) shareholders of the bank under resolution shall bear the losses first;
  - b) creditors of the bank under resolution shall bear losses after the shareholders by ensuring equal treatment of creditors, whose claims are of the same order of priority in the normal compulsory insolvency proceedings, unless provided otherwise in this Law;
  - c) creditors of the bank under resolution shall not incur greater losses than they would have incurred had the bank been placed under compulsory insolvency proceedings;
  - d) insured deposits are fully protected up to the maximum level of coverage as defined in the legislation on deposits insurance;
  - e) bank administrators shall be removed, unless the continuation of their duty is considered to be necessary for the achievement of the resolution objectives;
  - f) the current bank administrators shall be obliged to provide all necessary assistance for the achievement of the resolution objectives;
  - g) bank administrators who have influenced the placing of the bank under resolution procedure shall be liable for the actions or omissions, caused intentionally or negligently, that have caused damages to the bank;
  - h) safeguards for shareholders and creditors of the bank, as well as for third parties, shall be applied in accordance with this Law;
  - i) except when otherwise provided in this Law, creditors of the same class shall be treated in an equitable manner.
2. The Resolution Authority shall make sure that the negative effects of resolution on other entities of the banking group and on the stability of the financial system as a whole shall be minimised.
3. Where the sale of business tool, the bridge bank tool or the asset separation tool is applied to a bank, the employers of the bank are treated pursuant to the provisions of the Labour Code of the Republic of Albania.

## **Article 23**

### **Special management**

1. If the Resolution Authority assesses that a change to the governance and management of a bank under resolution would contribute to the achievement of resolution objectives, it shall have the right to place the bank under special management, by appointing one or more special managers.
2. The Resolution Authority undertakes the decision referred to in paragraph 1 of this Article at any time that it deems reasonable during the resolution procedure.
3. With the entry into force of the decision referred in paragraph 1 of this Article, the functions and powers of bank's management as well as the powers of the bank's general assembly of shareholders are exercised by the special manager.
4. A special manager shall be appointed for a term not longer than a year. That term may be extended only if the Resolution Authority assesses that the conditions for which the administrator was appointed continue to be met, according to this Article.
5. The decision referred to in paragraph 1 of this Article shall set the level of remuneration to be received by the special manager, which shall be afforded by the bank.
6. The Resolution Authority may substitute the special manager at any time.
7. The special manager must be a person independent from the bank and must meet the requirements laid down in paragraph 6 of Article 19 of this Law.
8. The special manager shall take all the measures necessary to achieve the resolution objectives, and implements the resolution tools and measures, in accordance with this Law.
9. The special manager shall exercise the following rights and duties:
  - a) delivers to every office and unit of the bank, a notice of the date and time of entry into force of the bank's special administration and his appointment and also the decision issued by him regarding the hierarchy of decision-making and conduct of operations;
  - b) requests from other managers and employees of the bank, to make available all the documents of the bank, to prepare reports on its condition, as well as to provide upon his request written information and additional reports on the activities of the bank;
  - c) has the right to dismiss any employee who refuses to provide the information requested by him;
  - d) within 30 days from the date of his appointment, he takes possession of all the inventory of assets and properties of the bank, as well as all archive documentation;
  - e) takes all measures to preserve the assets of the bank, undertaking at least the following actions:
    - i. changes the rules of entry into the buildings and premises where are held the valuables, documents, information, equipment, the use of which damages the property interests of the bank, replacing codes and passwords and placing restrictions on the persons that are entitled to enter into these environments;

- ii. changes or creates new passwords for computer network access and releases new types of access cards for entry into the bank premises to authorized employees and controls the entry of other employees in these facilities;
  - iii. suspends the powers of persons who can operate on behalf of the bank and authorizes employees appointed by him;
  - iv. notifies third parties of all changes relating to the authorizations and the right of representation;
  - v. informs correspondent banks, brokers and persons who manage the assets and records on behalf of the bank that all authorizations granted by the bank until his appointment are suspended and the authorizations are given to a limited number of persons, whose names are notified;
  - vi. prohibits the payment of dividends or capital distribution to shareholders, as well as payment of the administrators, except for the compensation for the services they have performed in the bank;
  - vii. With the approval of the Resolution Authority, may decide that the bank should not, for a certain period of time, collect deposits and pay obligations owed to third parties.
10. During the period in which the bank is placed in special administration, all transactions carried out by it without authorization of the special manager or persons designated by him, shall not have legal validity.
11. The special manager shall have the right to order employees and administrators to implement specific functions in the bank. These administrators and employees may be dismissed by the special manager pursuant to the dispositions of the Code of Employment and the respective legislation.
12. The special manager shall submit to the Resolution Authority, both at the start and end of his mandate, a report on the bank's activities and financial condition and on the actions taken in the discharge of his duties at monthly intervals or more frequently if the Resolution Authority so requests.
13. The exercise of functions and powers of a special manager shall be supervised by the Resolution Authority.
14. The decision referred to in paragraph 1 of this Article may set limits to the functions and powers of a special manager or require that certain legal actions of the special manager shall be subject to the Resolution Authority's prior consent.
15. The Resolution Authority shall publish the appointment of a special manager on the official website and the Official Bulletin of the Bank of Albania.
16. The decision for special management, the appointment and removal of the special manager and the termination of special management in a bank shall be registered at the National Business Centre by the special manager based on the decision of the Resolution Authority.

17. The Resolution Authority shall notify immediately the Deposit Insurance Agency for reaching a decision and shall cooperate with the latter during the special administration.

## **Article 24**

### **Valuation for the purposes of resolution**

1. Before initiating the resolution procedure or exercising the power to write down or convert, the Resolution Authority shall ensure a fair, prudent and realistic valuation of the bank's assets and liabilities is carried out by an auditor independent from the bank and any public authority, including the Resolution Authority.
2. Where an independent valuation according to paragraph 1 of this Article is not possible, the Resolution Authority may carry out a provisional valuation of the assets and liabilities of the bank.
3. The objective of the valuation shall be to assess the value of the assets and liabilities of the bank in the moment that the bank meets the conditions for resolution in accordance with Article 21 of this Law.
4. The Resolution Authority shall receive data from the Deposit Insurance Agency in relation to:
  - a) the list of depositors and deposits amounts that are reimbursed in the event of compulsory liquidation of the bank;
  - b) all the estimated expenditure of the Deposit Insurance Agency related to the compensation process;
  - c) data about the state of “Resolution Fund” and “Deposit Compensation Fund” of the banks.
5. The purposes of the valuation shall be to ensure the necessary information for the Resolution Authority:
  - a) on whether the conditions for resolution are met;
  - b) on choosing the appropriate resolution tool to be implemented for the bank as well as the conditions for the write down or conversion;
  - c) on determining the extent of the cancellation or dilution of shares and the extent of the write down or conversion of liabilities into the relevant capital instruments, when the power to write down or convert them is applied;
  - d) on determining the extent of the write down or conversion of liabilities into relevant capital instruments, when the bail-in tool is applied;
  - e) on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the value of any consideration to be paid to the bank under resolution or to the owners of the shares when the bridge bank tool or asset separation tool is applied;
  - f) on the assets, rights, liabilities or shares or other instruments of ownership to be transferred when the sale of business tool is applied;

- g) on any losses on the assets of the bank that may be fully recognised at the moment the resolution tools are applied or the power to write down or convert is exercised.
6. The valuation shall be supplemented by the following information as appearing in the accounting books and records of the bank:
    - a. an updated balance sheet and a report on the financial position of the bank;
    - b. an analysis of the accounting value of the assets;
    - c. the list of on balance sheet and off balance sheet liabilities shown in the books and records of the bank, showing the priority levels as defined in the legislation in force on banks in the Republic of Albania, for the cases of initiation of compulsory liquidation procedures.
  7. The categories of creditors shall be determined through the valuation in accordance with their priority for paying the obligations as defined by the legislation in force on banks in the Republic of Albania for the cases of initiation of compulsory liquidation procedures and potential benefits for each class of shareholders and creditors, in the case of compulsory liquidation being implemented.
  8. Where due to urgent circumstances of the case it is not possible to comply with the requirements in paragraphs 5 and 6, the provisional valuation shall be carried out pursuant to paragraph 2 of this Article. The provisional valuation shall comply with the requirements of paragraph 3 and in so far as possible the requirements of paragraphs 1, 5 and 6 of this Article.

The provisional valuation referred to in this paragraph includes a reserve for covering additional losses that may be detected in the definitive valuation.

9. Provisional valuation is applied until an independent evaluator has carried out a valuation that is fully compliant with all the requirements laid down in this Article. That ex-post valuation shall be carried out as soon as practicable. The purposes of the ex-post definitive valuation shall be:
  - a) to ensure that any losses on the assets of the bank are fully recognised in the books of accounts of the bank;
  - b) to provide the appropriate information for reaching the decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 7 of this Article.
10. In the event that the ex-post definitive valuation's estimate of the net asset value of the bank is higher than the provisional valuation's estimate, the Resolution Authority shall have the right:
  - a) to increase the value of the claims of creditors or owners of relevant capital instruments which have been affected by the bail-in tool;
  - b) order to bridge bank or asset management company to give the shareholders or holders of other proprietary instruments other payments related to the assets, rights, obligations of the bank regarding the shares or instruments of ownership.



11. The Resolution Authority shall select the independent evaluator to perform the evaluation referred in paragraph 1 of this Article, while the fee for carrying out this valuation shall be borne by the bank under resolution.
12. The provisions of this Article shall apply to the independent valuation of assets and liabilities of a banking group member as well.
13. The valuation is an integral part of the decision to place the bank under resolution. The valuation carried out pursuant this Article may be subject to appeal in court together with the decision to initiate resolution proceedings as defined in Article 68 of this Law.

The Resolution Authority shall establish through a sub-legal act the conditions and manner of the selection of the evaluator and the valuation performance in accordance with this Article.

## **SECTION 2**

### **Resolution Tools**

#### **Article 25**

#### **General principles of resolution tools**

1. The resolution tools are the following:
  - a) the sale of business;
  - b) the bridge bank;
  - c) the asset separation;
  - d) the bail-in.
2. The Resolution Authority may apply the resolution tools referred to in paragraph 1 of this Article individually or in any combination. However, it shall apply the asset separation tool only together with another resolution tool.
3. Where only the resolution tools referred to in letters “a” or “b” of paragraph 1 of this Article are used to transfer only part of the assets, rights or liabilities of the bank under resolution, the bank from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings.
4. The normal insolvency proceedings relating to the invalidity or non-enforcement of legal acts that affect the rights of creditors shall not be apply for the transference of assets, rights or liabilities from a bank under resolution.
5. The Resolution Authority and the Deposit Insurance Agency may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools as a deduction from any consideration paid by the recipient to the bank under resolution or the owners of the shares or other instruments of ownership, or as a consequence of the preference order for the repayment of obligations in a wind up.

6. In the case of a systemic crisis, the Resolution Authority may seek funding from alternative financing sources through the use of government stabilisation tools provided for in Articles 43 and 44 of this Law, only when shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities have contributed to loss absorption and recapitalisation of the bank through the write down, conversion or otherwise with an amount not less than 6 % of total liabilities including regulatory capital measured at the time of resolution action in accordance with the Article 24 of this Law.

### **SECTION 3**

#### **The sale of business tool**

#### **Article 26**

#### **The sale of business**

1. The Resolution Authority has the power to sell to a purchaser, other than a bridge bank, through the sale of business tool:
  - a) shares or other instruments of ownership issued by a bank under resolution; and/or
  - b) all or any assets, rights or liabilities of that bank.
2. The sale referred to in paragraph 1 of this Article shall take place without obtaining the consent of shareholders of the bank under resolution or any third party other than the purchaser, and in this case without the need to comply with any procedural requirements under company or securities Law other than those included this Law.
3. The sale of business pursuant to paragraph 1 of this Article shall be carried out in accordance with the commercial terms and by having regard to the specific circumstances.
4. Any consideration paid by the purchaser shall benefit:
  - a) the owners of the shares or other instruments of ownership, where the sale of business has been effected by transferring to the purchaser shares or other instruments of ownership issued by the bank under resolution;
  - b) the bank under resolution, where the sale of business has been affected by transferring to the purchaser some or all of the assets or liabilities of the bank.
5. When applying the sale of business tool the Resolution Authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by a bank under resolution or, as the case may be, assets, rights or liabilities of the bank under resolution.
6. Following an application of the sale of business tool, the Resolution Authority may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the bank under resolution, or the shares or other instruments of ownership back to

their original owners, and the latter shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

7. The sale of business, pursuant to paragraph 1, shall require the purchaser to have the appropriate licence to exercise the banking activity. Otherwise, the Supervisory Authority evaluates the application for licensing of the purchaser in a timely manner.
8. Where a transfer of shares or other instruments of ownership would result in the acquisition of or increase in a qualifying holding in a bank under resolution, the Supervisory Authority shall carry out the approval required, as defined by the legislation in force on banks in *the Republic of Albania*, in a timely manner that does not delay or prevent the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.
9. if the Supervisory Authority has not completed the assessment referred to in paragraphs 6 and 7 of this Article from the date of transfer of shares or other instruments of ownership in the application of the sale of business tool, the following provisions shall apply:
  - a) such a transfer of shares or other instruments of ownership to the acquirer shall have immediate legal effect;
  - b) during the assessment period and during the re-transfer period provided by letter (f) of this paragraph, the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the Resolution Authority, but which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;
  - c) during the assessment period and during any divestment period provided by letter (f), the measures for infringing the requirements of prior approval of the qualifying holdings as defined by the legislation in force on banks *in the Republic of Albania*, shall not apply to such a transfer of shares or other instruments of ownership;
  - d) promptly upon completion of the assessment, the Supervisory Authority shall notify the acquirer in writing of whether the competent authority approves or opposes such a transfer of shares or other instruments of ownership to the acquirer;
  - e) if the Supervisory Authority approves the transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt of the notification for the approval from the Supervisory Authority;
  - f) if the Supervisory Authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then:
    - i. the voting rights attached to such shares or other instruments of ownership as provided by letter (b) of this paragraph shall remain in full force and effect;

- ii. the Resolution Authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the Resolution Authority having taken into account prevailing market conditions; and
  - iii. if the acquirer does not complete such divestment of shares or other instruments of ownership within the period established by the Resolution Authority, then the Authority, imposes on the acquirer penalties and other measures for infringing the requirements for qualifying holdings and there will be applicable the legal effects defined in the legislation in force on banks in the Republic of Albania.
10. Transfers made by virtue of the sale of business tool are subject to the safeguards provided in Articles 56 – 63 of this Law.
11. The purchaser referred to in paragraph 1 of this Article may continue to exercise the rights of membership and access to payment, clearing and settlement systems and deposit guarantee schemes of the bank under resolution, provided that the purchaser meets the membership and participation criteria for participation in such systems.
12. Notwithstanding the provisions of paragraph 9 of this Article for treatment of shareholders and creditors, shareholders or creditors of the bank under resolution and other third parties whose assets, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, rights or liabilities transferred.

## **Article 27**

### **The sale of business procedural requirements**

1. When applying the sale of business tool to a bank, the Resolution Authority shall market, or make arrangements for the marketing of those assets, rights, liabilities, shares or other instruments of ownership of that bank that the authority intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.
2. The marketing referred to in paragraph 1 of this Article shall be carried out in accordance with the following criteria:
  - a) it shall be as transparent as possible and shall make a real presentation of the assets, rights, liabilities, shares or other instruments of ownership of that bank that the authority intends to sell, having regard to the circumstances and in particular the need to maintain financial stability;
  - b) it shall not unduly favour or discriminate between the potential purchasers;
  - c) it shall be free from any conflict of interest;
  - d) it shall not confer any unfair advantage on a potential purchaser;
  - e) it shall take account of the need to effect a rapid resolution action;

f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

With the exception of the criteria provided in letter (b) of this paragraph, the other principles referred to in this paragraph shall not prevent the Resolution Authority from soliciting particular potential purchasers. The marketing costs are covered by the bank.

3. The Resolution Authority may apply the sale of business tool without complying with the requirement to organise the marketing provided in paragraph 1 of this Article when:
  - a) compliance with this requirement would be likely to undermine one or more of the resolution objectives;
  - b) the financial stability is threatened by a material risk, arising from or aggravated by the failure or likely failure of the bank under resolution to fulfil its obligations; and
  - c) it has a negative impact on the effectiveness of the sale of business tool.

## **SECTION 4**

### **Bridge bank tool**

#### **Article 28**

#### **Bridge bank**

1. The Resolution Authority shall set up a bridge bank so that, by acquiring shares or other instruments of ownership, assets, rights and liabilities of the bank under resolution, the critical functions of that bank will be maintained.
2. The bridge bank is a legal person that meets all of the following requirements:
  - a) it is wholly or partially owned by one or more public authorities and is controlled by the Resolution Authority;
  - b) it is created for the purpose of holding a part or all of the shares or other instruments of ownership or all of the assets, rights and liabilities of the bank under resolution with a view to maintaining access to critical functions.
3. The total value of liabilities transferred to the bridge bank cannot exceed the total value of assets transferred to the bridge bank from the bank under resolution or provided from other sources.
4. The transfer referred to in paragraph 1 of this Article does not require the consent of the shareholders and creditors of the bank under resolution or any third party, other than the bridge bank, and is not prevented or limited by any procedural requirement of the companies or securities Law.
5. The deposits that are transferred to the bridge bank remain insured according to the provisions of the Law on deposits insurance. With its establishment and licencing, the bridge bank is part of the deposit insurance scheme according to the provisions of the current legislation on deposit insurance.

6. Any amount paid by the bridge bank is for the benefit of:
  - a) the owners of the shares or other instruments of ownership, where the transfer to the bridge bank has been effected by transferring shares or other instruments of ownership issued by the bank under resolution ;
  - b) the bank under resolution, where the transfer to the bridge bank has been effected by transferring some or all of the assets or liabilities of the bank under resolution to the bridge bank.
7. Following an application of the bridge bank tool, the Resolution Authority may:
  - a) transfer rights, assets or liabilities back from the bridge bank to the bank under resolution, or the shares or other instruments of ownership back to their original owners, and the latter shall be obliged to take back any such assets, rights or liabilities, provided that the conditions laid down in paragraph 8 of this Article are met;
  - b) transfer, shares or other instruments of ownership or assets, rights or liabilities from the bridge bank to a third party.
8. The Resolution Authority may at any time order the transfer from the bridge bank to the original owners the shares or other instruments of ownership or assets, rights or liabilities in the cases when:
  - a) the possibility that the specific shares, assets, rights or liabilities might be transferred back is stated in the decision by which the transfer was made;
  - b) the specific shares, assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions provided in the decision based on which the transfer was made.
9. Transfers between the bank under resolution, or the original holders of shares, on the one hand, and the bridge bank on the other, shall be subject to the safeguards referred to in Articles 56 – 63 of this Law.
10. The statute of the bridge bank is approved by the Resolution Authority and is registered at the National Business Centre.
11. The Resolution Authority appoints and may remove, at any time, the administrators of the bridge bank.
12. The Resolution Authority determines the business strategy and the profile risk of the bridge bank as well as the remuneration and other compensations for the administrators of the bridge bank.
13. The bridge bank shall be considered to be a continuation of the bank under resolution, and may continue to exercise any such right that was exercised by the bank under resolution in respect of the assets, rights or liabilities transferred as defined in the decision of the Resolution Authority.
14. The Resolution Authority shall make sure that the activity of the bridge bank shall cease not later than two years after it is set up.
15. The Supervisory Authority establishes through sub-legal acts the manner of exercising the activity of the bridge bank, licensing, supervision and cases of ending of the activity

of the bridge bank. The Supervisory Authority has the right to determine eased requirements for the licensing and supervision of the bridge bank compared to requirements established for other banks, at the beginning of the exercise of its activity.

16. The managing bodies and directors of the bridge bank are not liable to shareholders or creditors of the bank under resolution, except for the cases when the acts or omissions from gross negligence or errors which have direct consequences for those shareholders. They perform their duties with due diligence in connection with transferred assets and liabilities and report to the Resolution Authority, pursuant to the time and manner specified in sub-legal act.
17. Provisions of the commercial legislation, securities legislation and also other legislation in force, do not apply if they are not in compliance with the provisions of this Law on the establishment, licensing, and functioning of the bridge bank

## **SECTION 5**

### **Asset separation tool**

#### **Article 29**

#### **Asset separation**

1. The Resolution Authority may take the decision to transfer assets, rights and liabilities of the bank under resolution or the bridge bank to another legal person not being a bridge bank, hereinafter referred to as the asset management vehicle, if at least one of the following conditions is met:
  - a) the situation of the particular market for these assets is such that their sale in the compulsory insolvency procedure could have an adverse effect on the financial market;
  - b) such transfer is necessary to ensure the proper functioning of the bank whose assets or liabilities were transferred;
  - c) such transfer is necessary to maximise proceeds from insolvency.
2. The transfer referred to in paragraph 1 shall take place without obtaining the consent of the shareholders of the bank under resolution or any third party, and without complying with any procedural requirements under company or securities Law.
3. For the purposes of the asset separation tool, an asset management vehicle is a legal person that meets all of the following requirements:
  - a) is established in the form of a joint stock company, as defined by the legislation in force on entrepreneurs and companies;
  - b) it is wholly or partially owned by one or more public entities and is controlled by the Resolution Authority;

- c) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more banks under resolution or a bridge bank.
4. The Asset management vehicle manages the assets transferred to it in order to maximise their value through the sale.
5. The Resolution Authority approves:
  - a) the constitutional documents of the asset management company;
  - b) the nomination of management bodies of the asset management company;
  - c) the remuneration of the members of the management body of the asset management company and the act on determining their responsibilities;
  - d) the strategy and risk profile of the asset management vehicle.
6. When applying the asset separation tool, the Resolution Authority shall determine the consideration for which assets, rights and liabilities are transferred to the asset management company in accordance with the principles provided in Article 24 of this Law. This paragraph does not prevent the consideration having nominal or negative value.
7. The Resolution Authority orders the transfer of the assets and liabilities provided that:
  - a. the option that the assets, rights or liabilities may be transferred back is explicitly determined by the instrument through which the transfer was accomplish,
  - b. specific assets or liabilities that do not in fact fall within the classes of assets or liabilities determined in the decision or do not meet the transfer criteria specified in the decision.
8. The management body and the senior management of the asset management vehicle shall have no liability to shareholders or creditors of the bank under resolution, unless the act or omission implies negligence or serious misconduct which directly affects rights of such shareholders. They perform activities relating to the transferred assets and liabilities with due diligence and report thereon to the Resolution Authority within the timeframes and in the manner determined by the decision referred in paragraph 1 of this Article.
9. The asset management vehicle, established pursuant to this Article, is excluded as an entity of the provisions of the legislation in force on collective investments companies.
10. The Resolution Authority establishes through a sub-legal act, the conditions and manner of establishing and functioning of an asset management vehicle.

## **SECTION 6**

### **Bail-in tool**

#### **Article 30**

##### **Bail-in**



1. The Resolution Authority may apply the bail-in tool in accordance with the resolution principles for reaching any of the following purposes:
  - a) recapitalise the bank under resolution in order to continue to carry out the activities for which it is licensed, and to protect market confidence in the bank; and/or
  - b) write down or convert to equity liabilities or debt instruments that are transferred to the bridge bank in order to providing capital for that bridge bank, or are transferred within the sale of business tool or the asset separation tool;
  - c) restoring the bank in a good financial position and ensuring its long term sustainability.
2. The Resolution Authority may at the same time apply the resolution tools referred to in letters “a”, “b”, and “c” of paragraph 1 of Article 25 of this Law and the bail-in tool for the purpose referred to in letter “b” of paragraph 1 of this Article, in case the purpose provided in letter “a” of paragraph 1 of this Article are not met.

### **Article 31**

#### **Scope of bail-in tool**

1. The bail-in tool may be applied to all liabilities of a bank that are not excluded from the scope of that tool pursuant to paragraphs 2 and 4 of this Article.
2. The Resolution Authority shall not exercise the write down or conversion powers to the following liabilities of the bank:
  - a) liabilities arising from insured deposits, up to the maximum amount insured as defined in the legislation in force on deposits insurance;
  - b) liabilities secured by mortgage, pledge, securing charge, financial collateral or other *in rem* related right, including repo operations, covered bonds and liabilities in the form of financial instruments used for hedging purposes;
  - c) liabilities arising from the management of clients assets, held by the bank under resolution on behalf of investment and pension funds;
  - d) liabilities to domestic or foreign banks and investment companies, excluding entities that are part of the same banking group, with an original maturity of less than seven days;
  - e) liabilities with a remaining maturity of less than seven days, owed to payment systems and clearing and settlement systems as defined by the legislation in force on payments *systems* and/or important operators of the participants in these systems, arising from the maturity date;
  - f) liabilities to employees arising from accrued and unpaid salaries, pension or other fixed remuneration, except for the part of salary relating to the employee’s contribution to employer’s business success (rewards, bonuses etc.) and other variable component of remuneration;

- g) liabilities to creditors who have sold products or have provided services to the bank under resolution, which are necessary for its daily functioning of operations, including services of information technology, utilities and rental;
  - h) tax liabilities and liabilities in respect of social insurance and health contributions;
  - i) liabilities to the Deposit Insurance Agency and contribution for the resolution fund.
3. Notwithstanding paragraph 2, letter “b” of this Article, the Resolution Authority may also apply the bail-in tool to any part of liabilities exceeding the value of the asset or of the right against which these liabilities are secured.
  4. Notwithstanding paragraph 2 of this Article, in exceptional circumstances, where the bail-in tool is applied, the Resolution Authority may fully or partially exclude certain eligible liabilities from the write-down and conversion, where:
    - a) it is not possible to write down or convert into equity that liability within a reasonable time notwithstanding the necessary activities that the Resolution Authority would undertake for such purpose;
    - b) the exclusion is necessary for the continuance of the critical functions and main activities of the bank under resolution;
    - c) the exclusion is necessary to avoid any negative impact to the stability of the financial system;
    - d) the write-down or conversion into equity of those liabilities causes such a reduction in value that the losses borne by other creditors would be higher than if those liabilities were excluded from the write-down or conversion into equity.
  5. If the Resolution Authority fully or partially excludes the application of write-down or conversion to some eligible liabilities in accordance with this Article and if losses that would be covered by the write-down or conversion of these liabilities are not fully transferred to other creditors, the Resolution Fund may be used to:
    - a) cover these losses and the restoration of the zero net value of assets of the bank under resolution,
    - b) purchase shares or other instruments of ownership of the bank for the purpose of recapitalising it.
  6. The “Resolution Fund” may be used as provided for the purposes of paragraph 5 of this Article only where:
    - a) the shareholders and the other creditors have absorbed the losses and a recapitalisation is made in an amount which is not less than 6% of the total liabilities including regulatory capital of the bank under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 24 of this Law;
    - b) the contribution of the resolution fund does not exceed 5% of the total liabilities including regulatory capital of the bank under resolution.

7. The Resolution Authority shall prescribe in sub-legal acts the terms and manner of performing the write-down and conversion of liabilities of the bank under resolution and the exceptional cases referred to in point 6 of this Article.

### **Article 32**

#### **The minimum requirement of regulatory capital and eligible liabilities**

1. A bank shall, at all times, meet the requirements for the minimal level of regulatory capital instruments and eligible liabilities.
2. The requirement for the minimal level referred to in paragraph 1 of this Article is calculated as the amount of regulatory capital instruments and eligible liabilities expressed as a percentage of total liabilities and regulatory capital instruments of the bank. For the purpose of this paragraph, derivative liabilities shall be included in the total liabilities on the basis that full recognition is given to counterparty netting rights.
3. Eligible liabilities are considered bank obligations which satisfy the following conditions:
  - a) the instrument is issued and fully paid up;
  - b) the instrument is not issued with the right of re-purchasing, and/or is not guaranteed by the bank itself;
  - c) the purchase of the instrument was not funded directly or indirectly by the bank;
  - d) the liability has a remaining maturity of at least one year;
  - e) the liability does not arise from a derivative;
  - f) the liability does not arise from a secured deposit which benefits from preference in the compulsory liquidation proceedings in accordance with the legislation in force on banks in the Republic of Albania.
4. For the purpose of paragraph 3, letter “d” of this Article, when a liability confers upon the creditor a right to early reimbursement, the maturity date of this liability shall be the first date where such right arises.
5. The Resolution Authority shall prescribe in sub-legal acts the minimum requirement for regulatory capital instruments and eligible liabilities of each bank on an individual and a consolidated basis.

### **Article 33**

#### **Assessment of amount of bail-in**

1. When applying the bail-in tool, the Resolution Authority is based on the valuation referred to in Article 24 of this Law, by aggregating:
  - a) the amount by which eligible liabilities must be written down in order to restore the zero net asset value of the bank under resolution; and

- b) the amount of eligible liabilities that must be converted into shares or other instruments of ownership in order to restore the prescribed common equity tier 1 capital adequacy ratio of the bank under resolution or the bridge bank.
2. Pursuant to paragraph 1 of this Article, the Resolution Authority determines the eligible liabilities amount that is written down or converted into equity for the purpose of achieving the required level of common equity tier 1 of the bank under resolution or in the case of the bridge bank, ensure that it continues to carry out its activities for at least one year.
3. Where the Resolution Authority shall use the asset separation tool referred to in Article 29 Law, the amount by which eligible liabilities need to be reduced shall take into account also a prudent estimate of the capital needs of the asset management vehicle.
4. The Resolution Authority can use an assessment mechanism to reimburse creditors and then shareholders, when after the definitive valuation referred to in Article 24 of this Law, it is ascertained that the amount used for the implementation of the bail-in tool exceeds the recapitalisation requests.

#### **Article 34**

##### **Treatment of shareholders in bail-in or write down or conversion of shares or other instruments of ownership**

1. When applying the bail-in tool in accordance with Article 30 of this Law above or the write-down or conversion of capital instruments in accordance with Article 46 of this Law, the Resolution Authority shall undertake one or both of the following actions in respect of shareholders and holders of other instruments of ownership:
  - a) cancellation of the shares or other instruments of ownership or transfers the shares or other instruments of ownership to creditors of the bank under resolution; or
  - b) provided that, in accordance with the valuation carried out under Article 24 of this Law, the assets of the bank under resolution exceeds its liabilities (positive net value), dilute existing shareholders participation as a result of the conversion into shares or other instruments of ownership of the following:
    - i. capital instruments issued by the bank in accordance with the power referred to in Article 47 of this Law;
    - ii. eligible liabilities issued by the bank under resolution in accordance in accordance paragraph 1, letter “f” of Article 47 of this Law.
2. The dilution referred to in paragraph 1, letter “b” of this Article shall be carried out based on a conversion rate.
3. The actions referred to in paragraph 1 of this Article shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other ownership instruments were issued or conferred:

- a) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the adoption of the decision to open resolution proceedings; and
  - b) pursuant to the conversion of relevant capital instruments to common equity tier 1 instruments in accordance with Article 46 of this Law.
4. The Resolution Authority, for the purpose of determining the actions pursuant to paragraph 1 of this Article, shall have regard to:
    - a) the valuation carried out in accordance with Article 24 of this Law;
    - b) the valuation of the amount by which the Common Equity Tier 1 items must be reduced and/or written down or converted pursuant to point 1 of Article 46 of this Law; and
    - c) the aggregate amount pursuant to Article 33 of this Law.
  5. Where the conversion of relevant capital instruments would result in the increase of a qualifying holding, the Supervisory Authority shall give the prior approval, only if the conditions provided in the legislation in force on banks in the Republic of Albania are fulfilled and within a timely manner, that does not delay the application of the bail-in tool or prevents from achieving the resolution objectives.
  6. For the purpose of this Article, the following terms shall have the meaning as follows:
    - a. "transfer of shares or other existing instruments of ownership to the creditors of the bank under resolution", as referred to in letter "a" of paragraph 1 of this Article, shall mean the transfer of shares or other instruments of ownership to the creditors of the bank that have been affected by the application of resolution tools and closure of economic claims and ownership rights of the affected shareholders;
    - b. "dilution of existing shareholders" as referred to in letter "b" of paragraph 1 of this Article, shall mean proportionate dilution of the financial claims and ownership rights of the existing shareholders as a consequence of the issuance of new shares or instruments of ownership.

### **Article 35**

#### **Sequence of write down and conversion of obligations into equity**

1. When applying the bail-in tool, the Resolution Authority exercises the write down and conversion powers, pursuant to the following sequences:
  - a) Common Equity Tier 1 (ordinary shares) items are reduced in accordance with letter (a) of paragraph 1 of Article 46 of this Law;
  - b) if, and only if, the total reduction pursuant to letter (a) of this paragraph is less than the sum of the amounts referred to in letters "b" and "c" of paragraph 4 of Article 34

of this Law, the Authority reduces the principal amount of Additional Tier 1 instruments;

- c) if the total reduction pursuant to letters (a) and (b) of this paragraph is less than the sum of the amounts referred to in points (b) and (c) of paragraph 3 of Article 34 of this Law, it shall reduce the principal amount of Tier 2 instruments;
  - d) if the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to letters “a”, “b” and “c” is less than the sum of the amounts referred to in letters “b” and “c” of paragraph 4 of Article 34 of this Law, the Authority reduces the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the order of payment of obligations in compulsory insolvency proceedings, in conjunction with the write down pursuant to letters “a”, “b” and “c” to produce the sum of the amounts referred to in letters “b” and “c” of paragraph 4 of Article 34 of this Law;
  - e) if, the total reduction of shares or other instruments of ownership, relevant capital instruments and eligible liabilities made pursuant to letters “a”, “b”, “c” and “d” of this paragraph is less than the sum of the amounts referred to in letters “b” and “c” of paragraph 4 of Article 34 of this Law, authorities reduce the principal amount or the amount of the rest of eligible liabilities in accordance with the order of payment of obligations in compulsory insolvency proceedings, including the ranking of deposits provided for in the legislation in force on banks in the Republic of Albania, pursuant to Article 31 of this Law, in conjunction with the write down pursuant to letters “a”, “b”, “c” and “d” of this paragraph to produce the sum of the amounts referred to in letters “b” and “c” of paragraph 4 of Article 34 of this Law.
2. When applying the write down or conversion powers, the Resolution Authority allocates the losses resulting in the sum of the amounts referred to in letters (b) and (c) of paragraph 4 of Article 34 Law equally between shares or other instruments of ownership and eligible liabilities of the order of preference of payment of obligations by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and eligible liabilities to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in paragraph 4 of Article 31 of this Law. Pursuant to this point, liabilities which have been excluded from bail-in in accordance with paragraphs 2 and 4 of Article 31 of this Law may not receive more favourable treatment than eligible liabilities which are of the same rank in compulsory insolvency proceedings.
3. Before applying the write down or conversion into equity of liabilities referred to in letter (d) of paragraph 1 of this Article, the Resolution Authority converts liabilities into equity or reduces the principal amount on instruments referred to in letters (b), (c) and (d) of paragraph 1 of this Article when those instruments are not converted yet and fulfil the following conditions:

- a) provide terms for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of regulatory capital of the bank;
  - b) provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.
4. Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms provided in letter (a) of paragraph 3 of this Article before the application of the bail-in tool pursuant to paragraph 1, the Resolution Authority applies the write-down and conversion powers to the residual amount of that principal.
  5. When the Resolution Authority decides to write down or convert into equity one class of liabilities, initially affects the class of liabilities that has the lowest rank, unless otherwise provided under paragraphs 2 and 4 of Article 31 of this Law.

### **Article 36**

#### **Derivatives**

1. The Resolution Authority shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only after terminating these agreements.
2. The Resolution Authority has the right to terminate the obligations deriving from a derivative contract as from the date of the decision which established the commencement of resolution proceedings.
3. Notwithstanding the provision of paragraph 2 of this Article, the Resolution Authority shall not be obliged to terminate and close out (netting) a derivative contract provided that the liability arising from the derivative contract is excluded from the application of the bail-in tool in accordance with Article 31, paragraph 4 of this Law.
4. Where derivative transactions are subject to a netting agreement, the Resolution Authority or an independent evaluator determines as part of the valuation under Article 24 of this Law the liability arising from those transactions on a net basis in accordance with the terms of the agreement.
5. The Resolution Authority shall determine the value of liabilities arising from derivatives in accordance with:
  - a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;
  - b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and
  - c) appropriate methodologies for comparing the fall in value that arises from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in the case of a bail-in.
6. The Resolution Authority shall establish through a sub-legal act the appropriate methodologies for determining the value of liabilities arising from derivatives.

**Article 37**  
**Rate of conversion of liabilities to equity**

1. When acting in accordance with letter “f” paragraph 1 of Article 47 of this Law, the Resolution Authority may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with the principles referred to in paragraphs 2 and 3 of this Article.
2. The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred due to the write down and conversion referred to in paragraph 1 of this Article.
3. Where the Resolution Authority applies different conversion rates in accordance with paragraph 1 of this Article, the conversion rate applicable to liabilities that are considered more preferred in the order of payment of obligations in compulsory insolvency proceedings, shall be higher than the conversion rate applicable to liabilities classified into other priority claims.
4. The Resolution Authority shall establish through a sub-legal act the conditions for determining the debt conversion rates in the capital.

**Article 38**  
**Recovery and reorganisation measures to accompany bail-in**

1. When the Resolution Authority applies the bail-in tool to recapitalise a bank in accordance with letter (a) of paragraph 1 of Article 30 of this Law, ensures that a business reorganisation plan for that bank is drafted and implemented in accordance with Article 39 of this Law.
2. Organisational measures provided in paragraph 1 of this Article may include the appointment from the Resolution Authority of one or more administrators in order to draft and implement the business reorganisation plan as provisioned in Article 39 of this Law.

**Article 39**  
**Business reorganisation plan**

1. The bank that is subject to the application of the bail-in tool in order to increase the share capital in accordance with letter (a) of paragraph 1 of Article 30, of this Law shall, with the commencement of the bail-in proceedings, draft a business reorganisation plan of this Law and presents it to the Resolution Authority.
2. The Resolution Authority in cooperation with the Supervisory Authority, within one month from the delivery of the business reorganisation plan assesses if the implementation of such plan will restore bank's financial stability.



3. The business reorganization plan contains at least the following elements:
  - a) an analysis of the factors and problems based on which the bank was considered to be close a situation of insolvency;
  - b) a description of the measures aimed at restoring the long term sustainability of the bank, which implements the bail-in tool;
  - c) a timetable for implementing these measures.
4. Measures aimed at restoring the long term viability of the bank referred to in letter "b" of paragraph 3 of this Article may include:
  - a) reorganisation of the bank's activities;
  - b) changes to operational systems and infrastructure within the bank;
  - c) withdrawal from loss- making activities;
  - d) restructuring of existing activities that can be made competitive;
  - e) sale of assets or business lines.
5. In the case the Resolution Authority assess that measures are insufficient has the right to request to make other changes to the business reorganisation plan.

#### **Article 40** **Effect of bail-in**

1. The decision of the Resolution Authority to exercise the bail-in tool and the write down and conversion shall have legal effects as of the date specified in that decision.
2. The Resolution Authority for the purpose of implementation of the powers to write down and conversion to equity has the right to request:
  - a) the amendment of all relevant registers;
  - b) the temporary suspension of trading, removal from trading or delisting of shares or debt instruments in the regulated market;
  - c) the listing of new shares in the regulated market;
  - d) the relisting of debt instruments which have been written down in the regulated market, without the requirement for the issuing of a prospectus.
3. The authorities or persons who receive the abovementioned request from the Resolution Authority shall implement it immediately.
4. Where the Resolution Authority reduces to zero the principal amount of or outstanding amount payable of a liability by means of the power referred to in letter (f) of point 1 of Article 47 of this Law, that liability and any claims or obligation arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged and it cannot be claimed in any subsequent proceedings, including normal compulsory insolvency proceedings in relation to the bank under resolution or any successor entity.
5. Where the Resolution Authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability pursuant to paragraph 4 of this Article then:

- a) the liability shall be discharged to the extent of the amount reduced;
- b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable and any case is subject to the changes of the interest payable in proportion to the principal amount reduced, and any modification of the terms by the Resolution Authority by means of the power referred to in letter (i) of paragraph 1 of Article 47 of this Law.

#### **Article 41**

##### **Removal of procedural impediments to bail-in**

1. The Assembly of Shareholders of the Bank, at the request of the Supervisory Authority, shall authorise the executive director of the bank or the managing board of the bank to make a potential increase of share capital or of other Common Equity Tier 1 instruments, up to a maximum defined amount, so that, in the event that the Resolution Authority exercises the powers referred to in Article 47 of this Law, the bank is not prevented from issuing at any time new shares or other instruments of ownership.
2. The Resolution Authority shall assess whether it is appropriate to impose the requirement laid down in paragraph 1 of this Article in case of a particular bank for drafting or updating the resolution plan for that bank or banking group.
3. If the resolution plan provides for the possible application of the bail-in tool, the Resolution Authority shall verify that the share capital which shall be authorised or other Common Equity Tier 1 instruments is sufficient to cover the sum of the amounts referred to in letters (b) and (c) of paragraph 4 of Article 34 of this Law.
4. In case of capital increase through the conversion of liabilities to shares the pre-emptive rights of shareholders will not be applicable and the consent of shareholders will not be needed.

#### **Article 42**

##### **Contractual recognition of bail-in**

1. The bank provides for contractual terms by which the creditor or party to the agreement creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by the Resolution Authority.
2. Contractual terms defined in paragraph 1 of this Article are applied to all liabilities that:
  - a) are not excluded under paragraph 2 of Article 31 of this Law;
  - b) are not secured deposits;
  - c) are governed by the Law of another country; and

- d) have arisen after the entry into force of this Law.
3. Paragraphs 1 and 2 of this Article shall not apply where the liabilities or instruments referred above are subject to write down and conversion powers by the Resolution Authority of the other country pursuant to the Law that regulates these obligations or in compliance with a binding agreement concluded with the authorities of that country.
  4. The Resolution Authority may require the bank to provide a legal opinion issued by an internationally well-known Law firm and acceptable to the Resolution Authority to ensure the enforceability of these provisions in the relevant foreign jurisdiction.
  5. In case of failure of a bank to fulfil the requirements of paragraph 1 of this Article the Resolution Authority has the right to exercise the write down and conversion powers in relation to that liability.
  6. The Resolution Authority has the right to establish through a sub-legal act the list of obligations for which the exclusion pursuant to paragraph 2 of this Article is applied and also the content of the respective contractual obligations.

### **Article 43**

#### **Extraordinary public financial support**

1. The Council of Ministers may, pursuant to provisions of the legislation in force in need and urgency conditions, ensure extraordinary public financial support through additional public financial stabilisation tools in accordance with paragraph 5 of this Article.
2. The Council of Ministers represented by the Ministry of Finance, pursuant to provision of the legislation in force for the managing of the budget system, cooperates with the Resolution Authority in order to exercise the powers provided in this Article and Article 44 of this Law, for the purpose of implementing the public financial stabilisation tools.
3. The public financial stabilisation tools shall be used as a last resort only after having assessed and/or exploited the other resolution tools, including requirements of the bail-in tool provide in paragraph 6, of Article 31 of this Law.  
The use of public financial stabilisation tools shall have to ensure the stability of the financial system and the sustainability of public finances in the medium and long term perspective.
4. The Council of Ministers, represented by the Ministry of Finance, after the fulfilment of the conditions provided in paragraphs 1, 2 and 3 of this Article, based on the assessment of the financial situation and the measures taken which are presented by the Resolution Authority and also with the recommendation of the latter, may decide to apply the public financial stabilisation tools only after the conditions provided in paragraph 1 of Article 21 of this Law as well as one of the following conditions are met:
  - a) the application of the resolution tools would not be sufficient to avoid a significant adverse effect on the financial system;

- b) the application of the resolution tools would not be sufficient to protect the public interest, where liquidity assistance from the Bank of Albania has previously been given to the bank.
5. The public financial stabilisation tools shall consist of the following:
- a) participation in the capital of the bank with public funds as referred to in paragraph 1 of Article 44 of this Law;
  - b) temporary transfer of the ownership of shares of the bank to a public entity as referred to in paragraph 2 of Article 44 of this Law, which is implemented only if support has been previously granted to the bank through the public financial stabilisation tool provided in letter "a" of paragraph 5 of this Article.

#### **Article 44**

##### **Public financial stabilisation tools**

1. The Ministry of Finance, as the representative of the Council of Ministers, in accordance with the commercial legislation, may participate in the recapitalisation of a bank by providing public funds, pursuant to provisions of Article 43 of this Law, in exchange of:
  - a) Common Equity Tier 1 instruments;
  - b) Additional tier 1 instruments or Tier 2 instruments.
2. The Ministry of Finance may temporarily transfer the ownership of the bank's shares through the temporary transfer of the ownership of shares instrument to a public entity.
3. The Ministry of Finance ensures that the bank, in which it owns the capital instruments, is managed on a professional basis and also the capital instruments are then transferred to an entity of the private sector as soon as commercial and financial circumstances allow.

### **CHAPTER VI**

#### **WRITE DOWN AND CONVERSION POWERS**

##### **SECTION 1**

##### **Write down and conversion of capital instruments**

#### **Article 45**

##### **Requirement to write down or convert capital instruments**

1. Where a resolution action would result in losses being borne by creditors or their claims being converted, the Resolution Authority exercises the power to write down and convert capital instruments in accordance with this Article, before or together with the application of the resolution tools.
2. The power to write down or convert relevant capital instruments may be exercised either:
  - a) independently of resolution action; or

- b) in combination with a resolution tool or other resolution measures.
- 3. The Resolution Authority exercises the write down and conversion of the capital instruments issued by a bank when one or more of the following circumstances apply:
  - a) conditions for resolution specified in Article 21 of this Law have been met;
  - b) unless that power is exercised in relation to the relevant capital instruments, the bank or banking group will no longer be viable;
  - c) extraordinary public financial support is required by the bank except in any of the circumstances set out in letter (c) of paragraph 3 of Article 21 of this Law.
- 4. For the purposes of paragraph 3, a bank shall be deemed to be no longer viable only if both of the following conditions are met:
  - a) the bank or banking group is considered to be close to an investable situation of insolvency;
  - b) there is no reasonable prospect that any action, including alternative private sector measures or supervisory action, other than the write down or conversion of capital instruments, independently or in combination with a resolution action, would prevent the failure of the bank or banking group pursuant to letter (a) of this paragraph within a reasonable timeframe.
- 5. For the purposes of letter (a) of paragraph 4 of this Article, a bank shall be deemed close to an inevitable situation of insolvency when one or more of the circumstances set out in paragraph 2 of Article 21 of this Law shall occur.
- 6. For the purposes of letter (a) of paragraph 4 of this Article, a group shall be deemed close to an inevitable situation of insolvency when the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its regulatory capital.
- 7. Before exercising the power to write down and convert capital instruments, the Resolution Authority shall ensure that a valuation of the assets and liabilities of the bank is carried out in accordance with Article 24 of this Law. That valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the bank.
- 8. Any natural or legal person who claims that its legal rights or interests have been affected by the above measures, has the right of appeal pursuant to Articles 84 and 85 of this Law, in case the power of write-down and conversion of capital instruments is exercised pursuant to letter "a", letter 2 of this Article.

## **Article 46**

### **Provisions governing the write down or conversion of capital instruments**

1. The Resolution Authority shall exercise the power to write down or conversion of capital instruments in accordance with the order of debt repayment under compulsory insolvency proceedings, in a way that produces the following results:
  - a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the Resolution Authority takes one or both of the actions specified in paragraph 1 of Article 34 of this Law in respect of holders of Common Equity Tier 1 instruments;
  - b) the principal amount of Additional Tier 1 instruments is written down or converted or both into Common Equity Tier 1 instruments, to the extent required to achieve the resolution objectives set out in Article 20 of this Law or to the extent of the capacity of the relevant capital instruments, whichever is lower;
  - c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 20 of this Law or to the extent of the capacity of the relevant capital instruments, whichever is lower.
2. Where the principal amount of a relevant capital instrument is written down:
  - a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in paragraph 3 of Article 33 of this Law;
  - b) the holder of the relevant capital instrument that is written down does not have any right over that amount of the instrument, which has been written down, except for any rights already accrued before that moment, and any right for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power;
  - c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with paragraph 3 of this Article.

Letter (b) of this paragraph shall not prevent the exercising of rights of a holder of Common Equity Tier 1 instruments in accordance with paragraph 3 of this Article.

3. In order to effect a conversion of relevant capital instruments under letter (b) of paragraph 1 of this Article, the Resolution Authority may require banks to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments. Relevant capital instruments may only be converted where the following conditions are met:
  - a) those Common Equity Tier 1 instruments are issued by the bank or by a the bank parent institution, with the agreement of the Resolution Authority of the bank or, where relevant, of the Resolution Authority of the parent institution;
  - b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that bank for the purpose of securing regulatory capital with extraordinary public financial support or another public entity;
  - c) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;

- d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 37 of this Law.
4. For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 3, the Resolution Authority may require banks to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.
5. Where a bank meets the conditions for resolution and the Resolution Authority decides to apply a resolution tool to that bank, the Resolution Authority shall comply with the requirement laid down in paragraph 3 of Article 45 of this Law, before applying the resolution tool.

## **SECTION 2**

### **Resolution powers**

#### **Article 47**

#### **General powers**

1. In order to apply the resolution tools to the bank that meets the conditions for resolution, the Resolution Authority exercises one or more of the following powers:
  - a) to require any person to provide any information required to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and also information that is provided during on-site inspection;
  - b) to apply the resolution tools and powers ;
  - c) to take control of the bank by exercising all the rights and powers conferred upon the shareholders and of the management bodies;
  - d) transfer shares or other instruments of ownership issued by the bank;
  - e) transfer rights, assets or liabilities of the bank to another entity with the approval of the latter;
  - f) partly or in full reduce the liabilities or outstanding amount due in respect of eligible liabilities of the bank;
  - g) convert the bank's eligible liabilities into ordinary shares or other capital instruments of the bank, its parent institution or a bridge bank to which assets, rights or liabilities of this bank are transferred;
  - h) cancel debt instruments issued by the bank except for secured liabilities referred to in paragraph 2 of Article 31 of this Law;
  - i) amend the maturity of debt instruments issued by the bank and other eligible liabilities, or the interest rate payable on the basis of these instruments and other eligible liabilities, or the date on which the interest becomes payable and suspending

- payment for a temporary period, except for payments arising from secured liabilities referred to in paragraph 2 of Article 31 this Law;
- j) close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 36 of this Law;
  - k) remove or replace the management body or administrators of the bank;
  - l) reduce the nominal amount of the shares or other instruments of ownership of the bank under resolution or cancel them;
  - m) require the bank or its parent bank to issue new shares, including preference shares and convertible bonds;
2. The implementation of resolution tools or powers, by the Resolution Authority is neither subject to any approvals or consents by any person, including public Law bodies, shareholders or creditors of the bank subject to the exercise of these powers, nor subject to any requirement to publish any public notice or prospectus or to deliver or submit any document with any authority, except when provided in this Law.
  3. When the Resolution Authority exercises the powers pursuant to paragraph 1 of this Article, the safeguards provided for in the Articles 56 – 63 of this Law are applied to the persons whose rights have been affected, including shareholders, creditors and counterparties.

#### **Article 48**

##### **Ancillary powers**

1. When exercising a resolution power, the Resolution Authority shall have the right to exercise the following additional powers:
  - a) to provide that a transfer is free from any right or charge/pledge/mortgage affecting the financial instruments, rights, assets or liabilities transferred in accordance with Article 61 of this Law. Any right of set-off under the provisions of this Law is not considered to be a liability or charge/pledge/mortgage;
  - b) to remove the bank the right to acquire further shares or other instruments of ownership;
  - c) to require the respective authority to discontinue trading or suspend acceptance for trading on a regulated market or the official listing of financial instruments issued by the bank;
  - d) to provide that the recipient is treated as if it were under resolution for the purposes of any rights, obligations or actions taken subject to Articles 26 and 28 of this Law, including any rights or obligations relating to the participation in the regulated market;
  - e) to require the bank or the recipient to provide each other with information and assistance;



- f) to cancel or modify the terms of contracts to which the bank is a party or ensure that the recipient steps in its place as a party.
2. For the purpose of continuity of the business transferred from the bank under resolution to another entity, the Resolution Authority has the power to ensure to the recipient:
    - a) the continuity of contracts entered into by the bank, so that the recipient undertaking assumes the rights and liabilities relating to any financial instrument, right, asset or liability and substitute the bank, expressly or implicitly as a party in all relevant contracts; and
    - b) to substitute the bank as a party in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred irrespective of the consent of the counterparty.
  3. The powers in letter “d” of paragraph 1 and letter “b” of paragraph 2 shall not affect:
    - a) the right of an employee of the bank under resolution to terminate a contract of employment;
    - b) the right of a party to a contract to exercise rights under the contract, including the right to terminate a contract, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the bank under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

#### **Article 49**

##### **Power to require the provision of services and facilities**

1. The Resolution Authority has the power to require from the bank under resolution, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.
2. The provisions of paragraph 1 of this Article shall apply including where the bank under resolution or relevant group entity has commenced the compulsory insolvency proceedings.
3. The provision of operational services or facilities in accordance with paragraphs 1 and 2 of this Article shall not include any form of financial support.
4. The services and facilities referred to in paragraphs 1 and 2 of this Article shall be provided:
  - a) under the terms of the relevant agreement on the provision of services or facilities in force before the resolution action was taken and for the duration of that agreement; or
  - b) where there is no agreement on the provision of services or facilities, or where the agreement has expired, on reasonable terms.

#### **Article 50**

## **Resolution power in respect of assets, rights, liabilities and other instruments of ownership located in foreign countries**

1. In cases in which resolution involves action taken in respect of assets located in another country or instruments of ownership, rights or liabilities subject to the Law of another country, the Resolution Authority may require that:
  - a) the administrator or the receiver take all necessary steps to ensure that the transfer, write down, conversion or action becomes effective;
  - b) the administrator or the receiver hold the shares or other instruments of ownership, assets or rights or discharges the liabilities on behalf of the recipient until the transfer, write down, conversion or action becomes effective;
  - c) the reasonable expenses incurred by the recipient in carrying out any action referred to in letters “a” and “b” of paragraph 1 of this Article are met in the manner referred to in paragraph 5 of Article 25 of this Law.
2. Where the Resolution Authority assesses that, in spite of all the necessary steps referred to in paragraph 1 of this Article taken by the administrator or receiver, there is little possibility for the exercise of the write down and conversion power to be effective in relation to assets located in another country, shares or other instruments of ownership, rights or liabilities subject to the Law of another country, then it shall not proceed with the transfer, write down or conversion. If it has already requested the transfer, write down, conversion or action, that order shall be suspended.

## **Article 51**

### **Exclusion of certain contractual terms in early intervention and resolution**

1. The application of measures in accordance with this Law, including also the occurrence of any event directly linked to the application of such measures, shall not be considered to be a failure or condition for commencing normal insolvency proceedings based on which the financial collateral agreement is enforced, provided that substantive contract obligations continue to be performed.
2. Paragraph 1 of this Article shall also apply to contracts entered into by:
  - a) a subsidiary of the bank, the obligations under which are guaranteed by the bank or another entity of the banking group;
  - b) an entity of the group to which the bank belongs, which includes cross-default provisions.
3. Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, measures taken pursuant to this Law, including the occurrence of any event directly linked to the application of these measures, shall not be a cause for the contracting parties to:

- a. exercise any termination, suspension, modification, netting or set-off rights, in relation to a contract entered into by:
  - i. a subsidiary, the obligations under which are guaranteed by a group entity;
  - ii. any group entity which includes cross-default provisions of the contract.
- b. obtain possession, exercise control or enforce any guarantee over any property of the bank concerned or any group entity in relation to a contract which includes cross-default provisions;
- c. affect any contractual rights of the bank concerned or any group entity in relation to a contract which includes cross-default provisions of the contract.

## **Article 52**

### **Power to suspend certain obligations**

1. The Resolution Authority shall have the right to order the suspension of any payment or delivery of obligations arising from a contract to which a bank under resolution is a party and immediately publish it in the manner referred to in Article 66 of this Law. This suspension shall affect both parties.
2. The Resolution Authority shall establish through the decision the day and hour when the suspension shall enter into force and shall publish it pursuant to Article 66 of this Law.
3. The suspension referred to in paragraph 1 of this Article shall apply starting from the moment specified in paragraph 2 of this Article and lasts until midnight of the next working day, counting from the day specified in the decision.
4. Where a payment or obligation becomes due during the suspension period, the payment or obligation shall be immediately paid upon expiry of the suspension period.
5. By way of derogation from paragraph 1 of this Article the decision on suspension is not applied to:
  - a) deposits insured in accordance with the legislation in force on deposits insurance;
  - b) payment and repayment of obligations to payment systems or operators of systems as specified in the legislation in force on payment systems.
6. The Resolution Authority shall take into consideration the impact the exercise of the power provided in paragraph 1 of this Article might have on the functioning of the financial market.

## **Article 53**

### **Power to temporarily suspend the enforcement of instruments that guarantee the performance of obligations**

1. The Resolution Authority shall have the right to order the suspension of the execution by the creditors over the assets of the bank under resolution of the bank that serve as instruments that guarantee the performance of obligations. The Resolution Authority immediately

publishes this decision in the manner referred to in Article 66 of this Law and specifies the day and hour when the suspension enters into force. The suspension applies until midnight of the following business day starting from the day of publication of the order pursuant to article 66 of this Law.

2. By way of derogation from paragraph 1 of this Article, the order on suspension shall not be applied to assets of the bank under resolution, provided as collateral to the systems and operators of systems as referred to in the legislation in force on payment systems, .
3. The Resolution Authority shall take into consideration the impact the exercise of the power referred to in paragraph 1 of this Article, might have on the functioning of the financial market.

## **Article 54**

### **Power to temporarily suspend termination rights**

1. The Resolution Authority has the power to temporarily suspend the of termination rights to a contract by third parties which may have contractual relationships with the bank under resolution, provided that the contractual obligations and the provision of guarantees or collateral continue to be performed. The Resolution Authority shall immediately publish this notice, pursuant to Article 66 of this Law and specifies the day and time (hour) when the suspension takes effect.
2. The power referred to in paragraph 1 of this Article may also pertain to contractual relations entered into by a counterparty with a subsidiary of the bank under resolution when:
  - a) the contractual obligations are guaranteed or otherwise supported by the bank under resolution;
  - b) the termination right under the contract is based solely on the insolvency or financial condition of the bank under resolution; and
  - c) in case of exercising the transfer power provided in this law in relation to the bank under resolution, either all the assets and liabilities of the subsidiary relating to that contract are or may be transferred to the recipient, or the Resolution Authority guarantees in any other way for such obligations.
3. By way of derogation from the above paragraphs, the decision on suspension shall not apply to payment systems and operators of payment systems referred to in the legislation in force on payment systems.
4. By way of derogation from the above paragraphs, a party may terminate a contract before the end of the suspension period, if it receives notice from the Resolution Authority that the rights and liabilities covered by the contract shall not be transferred to the recipient, or shall not be written down or converted on the application of the bail-in tool in accordance with letter “a” of paragraph 1 of Article 30 of this Law.
5. The suspension shall apply until midnight of the following business day starting from the day of publication of the notice, pursuant to Article 66 of this Law.

## **Article 55**

### **Exercise of the resolution powers**

1. When implementing a resolution action, the Resolution Authority shall exercise control over the bank under resolution, so as to:
  - a) operate the bank with all the powers of its shareholders and management body;
  - b) manage and dispose of the assets and property of the bank;
2. The Resolution Authority shall exercise control referred to in paragraph 1 of this Article directly or through a special manager.
3. The Resolution Authority shall ensure that voting rights conferred by shares or other instruments of ownership of the bank under resolution are not exercised.

## **SECTION 3**

### **Protection of the shareholders and creditors**

## **Article 56**

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

1. Where the Resolution Authority shall transfer only parts of the rights, assets and liabilities of the bank under resolution, in order to fulfil the claims of shareholders and creditors whose claims have not been transferred, they shall benefit in satisfaction of their claims at least as much as what they would have received if the bank had been subject to winding up under normal insolvency proceedings, pursuant to the legislation in force on banks in the Republic of Albania, at the time when the decision referred to in Article 65 of this Law was taken.
2. Where the Resolution Authority shall apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted do not incur greater losses than they would have incurred if the bank had been subject to winding up under normal insolvency proceedings, pursuant to the legislation in force on banks in the Republic of Albania, immediately at the time when the decision referred to in Article 65 of this Law was taken.

## **Article 57**

### **Valuation of difference in treatment**

1. Immediately upon initiating the resolution procedure or immediately upon applying resolution tools or powers, the Resolution Authority shall carry out an independent valuation

to establish whether the bank's shareholders and creditors would be in a more favourable position if normal insolvency proceedings were initiated instead of the resolution procedure.

2. The valuation referred to in paragraph 1 of this Article shall determine:
  - a) the impact that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the bank under resolution, with respect to which the resolution action or actions have been effected, had entered normal insolvency proceedings, pursuant to the legislation in force on banks in the Republic of Albania, at the time when the decision referred to in Article 65 of this Law was taken;
  - b) the actual impact that shareholders and creditors have received, in the resolution of the bank under resolution; and;
  - c) the difference, if any, between the valuations carried out pursuant to letters "a" and "b".
3. The valuation shall:
  - a) assume that the bank under resolution, with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings, pursuant to the legislation in force on banks in the Republic of Albania, at the time when the decision referred to in Article 65 of this Law was taken;
  - b) assume that the resolution action or actions had not been effected;
  - c) disregard any provision of extraordinary public financial support to the bank under resolution.
4. The Resolution Authority may establish through a sub-legal act the methodology to carry out the valuation pursuant to paragraph 1 of this Article.

## **Article 58**

### **Protection of shareholders and creditors**

If, pursuant to the valuation carried out under Article 57 of this law it is determined that any shareholder or creditor referred to in Article 56 of this law, or the deposit insurance scheme in accordance with Article 78, has incurred greater losses than it would have incurred if they have entered normal insolvency proceedings, pursuant to the legislation in force on banks in the Republic of Albania, they shall be entitled to the payment of the difference from the "Resolution Fund".

## **Article 59**

### **Safeguard for counterparties in partial transfers**

1. The Resolution Authority shall ensure appropriate protection of the following agreements and their parties:
  - a) security agreements;
  - b) title transfer financial collateral agreements;
  - c) set-off agreements;

- d) netting agreements;
  - e) covered bonds;
  - f) other finance agreements, including securitisations and instruments used for hedging purposes, which form an integral part of the group of secured financial instruments and which are secured in a way similar to the covered bonds.
2. The safeguards specified in paragraph 1 of this Article apply if the Resolution Authority:
    - a) transfers some but not all of the assets, rights or liabilities of a bank under resolution to another entity or, from a bridge bank or asset management vehicle to another entity;
    - b) exercises the powers specified in letter “f” of paragraph 1 of Article 48 of this law.
  3. The safeguards shall apply irrespective of the number of parties involved in the agreements.
  4. For purposes of this Article and Article 61 of this Law, the definition of "security agreement" means every pledge, mortgage, or securing charge agreement.
  5. The Bank of Albania shall have the right to specify through a sub-legal act the types of agreements which are part of the categories defined in paragraph 1 of this Article.

## **Article 60**

### **Protection for title transfer financial collateral, set off and netting agreements**

1. The Resolution Authority may prohibit the transfer of partial rights and liabilities that arise from title transfer financial collateral agreements, repo agreements, set-off agreements and netting agreements, where the bank under resolution is a party thereto and may also amend or terminate the rights and liabilities that are protected under such agreements through the use of the additional powers provided in Article 48 of this Law.
2. For the purposes of the paragraph 1 of this Article, rights and liabilities are to be treated as protected under such an agreement if the parties to the agreement are entitled to set-off or net those rights and liabilities.
3. Notwithstanding paragraph 1 of this Article, where necessary in order to ensure availability of the covered deposits the Resolution Authority may:
  - a) transfer covered deposits which are part of any of the agreements mentioned in paragraph 1 of this Article without transferring other assets, rights or liabilities that are part of the same agreement; and
  - b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

## **Article 61**

### **Protection for security agreements**

1. The Resolution Authority, for liabilities secured under a security agreement, may decide the transferring at the same time of the obligation and of the guarantee.

2. Notwithstanding paragraph 1 of this Article, where necessary in order to ensure availability of the covered deposits the Resolution Authority may:
  - a) transfer covered deposits which are part of any of the agreements mentioned in paragraph 1 of this Article without transferring other assets, rights or liabilities that are part of the same agreement; and
  - b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

## **Article 62**

### **Protection for other finance agreements and covered bonds**

1. The Resolution Authority, for other finance agreements, including agreements included in letters "e" and "f" of paragraph 1 of Article 59 of this Law, may decide:
  - a) to prohibit the partial transfer of the assets, rights and liabilities which arise from other finance agreements, to which the bank under resolution is a party;
  - b) to terminate or to modify through the use of additional powers provided in Article 48 of this law, the rights and liabilities which constitute or form part of other finance agreements, to which the bank under resolution is a party.
2. Notwithstanding paragraph 1 of this Article, where necessary in order to ensure availability of the covered deposits the Resolution Authority may:
  - a) transfer covered deposits which are part of any of the agreements mentioned in paragraph 1 of this Article without transferring other assets, rights or liabilities that are part of the same agreement, and
  - b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

## **Article 63**

### **Partial transfers: protection of payment systems and securities registration and settlement systems**

1. The Resolution Authority shall ensure that the application of a resolution tool does not violate or affect the operation of payment systems and securities registration and settlement systems, where the Resolution Authority:
  - a) partially transfers the assets, rights or liabilities of a bank under resolution to another entity; or
  - b) uses the additional powers under Article 48 of this Law to cancel or amend the terms of a contract to which the bank under resolution is a party or to substitute a recipient as a party.



2. A transfer, cancellation or amendment as referred to in paragraph 1 of this Article shall not revoke a transfer order in contravention with the legislation in force on payments systems and shall not modify or negate the enforceability of transfer orders and netting the use of funds, securities or credit or protection of collateral as required by the same Law.

## **CHAPTER VII**

### **PROCEDURAL ACTIONS**

#### **Article 64**

##### **Notification requirements**

1. The Executive Council of the bank shall be obliged to notify the Supervisory Authority when it ascertains that the bank is failing or likely to fail within the meaning specified in Article 24, paragraph 2 of this Law.
2. Where the Resolution Authority shall determine that the conditions referred to in letters “a” and “b” of paragraph 1 of Article 21 of this Law are met in relation to that bank, it shall communicate that determination without delay, and by the necessary diligence for the protection of the confidentiality of information, to:
  - a) the Ministry of Finance;
  - b) the State Aid Commission;
  - c) the Supervising Authority and Resolution Authority for each branch of that bank outside of the territory of the Republic of Albania;
  - d) the Deposit Insurance Agency;
  - e) where applicable, the group-level resolution authority of the bank where the entity is subject to supervision on consolidated basis, the Supervising Authority responsible for the consolidated supervision at the group-level.

#### **Article 65**

##### **Decision for resolution**

1. A decision of the Resolution Authority for resolution shall contain:
  - a) the reasons for making that decision, by declaring the fact that the bank meets the conditions for resolution;
  - b) the concrete actions that will be taken including but not limited to the resolution tools, the power to write-down and convert, the appointment of a special administrator.

## **Article 66**

### **Procedural obligations of the Resolution Authority**

1. Immediately after taking a decision for resolution, the Resolution Authority shall notify the relevant bank and the authorities referred to in paragraph 2 of Article 64 of this Law.
2. The notification referred to in paragraph 1 of this Article shall include a copy of any administrative act by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.
3. The Resolution Authority shall publish a copy of the resolution decision, or a notice summarising the effects of the resolution action, and in particular the effect over secured depositors.
4. The publication shall be made:
  - a) on the official website of the Bank of Albania;
  - b) on the website of the bank under resolution;
  - c) on the regulated market, where the shares, other instruments of ownership or debt instruments of the bank under resolution are admitted to trading;
  - d) on the Official Bulletin of the Bank of Albania.

## **Article 67**

### **Confidentiality**

1. Any information related to the implementation of the provisions of this Law constitutes professional secret. The requirements of professional secrecy are binding in respect of the all legal and physical persons that are acknowledged with the professional (banking) secret, especially for the following persons:
  - a) the Bank of Albania;
  - b) the Ministry of Finance;
  - c) the State Aid Commission;
  - d) special managers or temporary administrators appointed under this Law;
  - e) potential purchasers contacted by the Resolution Authority irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition or not;
  - f) auditors, accountants, legal and professional advisors, evaluators and other experts directly or indirectly engaged by the Resolution Authority, the Ministry of Finance or by the potential acquirers referred to in letter “d”;
  - g) the Deposit Insurance Agency;
  - h) the body in charge of the resolution financing agreements;
  - i) the bridge bank or the asset management vehicle;

- j) any other persons who provide or have provided services directly or indirectly, to persons referred to in paragraph 1 of this Article;
  - k) senior managers, members of the management body and employees of the bodies or entities referred to in letters “a” to “i” before, during and after their appointment.
2. Entities and persons referred to in paragraph 1 of this Article, are prohibited from disclosing confidential information received during the course of their professional activities or obtained from any authority or the Bank of Albania in connection with its functions under this law, to any person or authority unless:
    - a) the provision of information is related with the exercise of their functions under this law;
    - b) the information is given in a summary or collective form such that individual banks cannot be identified; or
    - c) with the expressed and prior consent of the bank which provided the information.
  3. Any person or entity referred to in paragraph 1 of this Article shall be subject to civil and criminal liability in the event of an infringement of this Article, in accordance with Civil and Criminal Codes of the Republic of Albania.
  4. This Article shall not prevent:
    - a) employees and experts of the bodies or entities referred to in paragraph 1 of this Article from sharing information among themselves within each body or entity; or
    - b) the Bank of Albania, including its employees and experts, from sharing information with other authorities, competent ministries, central banks, the Deposit Insurance Agency, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system through the use of macro-prudential policies, persons charged with carrying out statutory audits of accounts or third-country authorities that carry out equivalent functions to the Resolution Authority, with which it has concluded agreements pursuant to Article 70 of this Law, or to a potential acquirer for the purposes of planning or carrying out a resolution action, subject to strict confidentiality requirements.
  5. Notwithstanding the abovementioned paragraphs of this Article, the entities and persons referred to in paragraph 1 herein may disclose the information obtained during the implementation of this law in the following cases:
    - a) to any other person where necessary for the purposes of planning or carrying out a resolution action, subject to confidentiality requirements;
    - b) to authorities responsible for overseeing payment systems and persons charged for carrying out statutory audits;
    - c) to relevant authorities, pursuant to legal procedures in civil or criminal cases.
  6. Provision of the information received by supervisory authorities or resolution authorities of other countries, to the entities provided for in paragraph 5 of this Law is done only after the prior approval of the authority which disclosed the information.

7. The Resolution Authority shall specify the internal rules on the confidentiality and exchange of information between different organisation units that are responsible for supervision and resolution.

## **CHAPTER VIII**

### **RIGHT OF APPEAL AND EXCLUSION OF OTHER ACTIONS**

#### **Article 68**

##### **Right of appeal**

1. Any natural or legal persons whose rights or legal interests are infringed upon by the decision to initiate resolution of the bank and to appoint the special administrator provided in Article 23 of this Law, shall have the right of administrative appeal in the Supervisory Council of the Bank of Albania, within 30 days from the publication date in the official website of the Bank of Albania. The notification shall also be published on two national television channels.
2. The lodging of the appeal referred to in paragraph 1 of this Article shall not suspend the execution of the decision to initiate resolution proceedings on the bank or of other decisions adopted by the Resolution Authority.
3. The Supervisory Council of the Bank of Albania shall assess the appeal made pursuant to paragraph 1 of this Article, within 15 days starting from the date it is made.
4. The administrative appeal shall be made in the form prescribed in the Code of Administrative Procedure.
5. The administrative appeal, according to this article, is a condition precedent for making an appeal with the competent court.
6. The person referred to in paragraph 1 of this Article, has the right to lodge an appeal with the Administrative Court of Appeal, pursuant to the provisions of the legislation in force on administrative courts and administrative disputes.
7. The decision to place the bank under resolution and also other acts of the Resolution Authority can be appealed to the Administrative Court of Appeal, pursuant to paragraph 6 of this Article, only with regard to determining the damage and respective compensation, which may be derived from this decision. In any case, the appeal before the court under this point does not suspend implementation of the decision to place the bank under resolution.
8. The court decisions taken pursuant to paragraph 7 of this Article, shall not affect the interests of third parties acting in good faith who have acquired shares, assets, rights or liabilities of a bank under resolution and does not affect any subsequent administrative acts or transactions concluded by the Resolution Authority which were based on the annulled decision.

## **Article 69**

### **Restrictions on other proceedings**

1. Without prejudice to the rights on the enforcement of security interests pursuant to Article 53 of this law, if necessary for the effective application of the resolution tools and powers, the competent court, upon the request of the Resolution Authority, applies a stay for an appropriate period of time in accordance with the objective pursued, on any judicial process in which a bank under resolution is or becomes a party. After the conclusion of the stay period decided by the court, the Resolution Authority may address a new request to the court to set a new deadline.

## **CHAPTER IX**

### **RELATIONS AND COOPERATION WITH FOREIGN COUNTRIES**

## **Article 70**

### **Agreements with other countries**

1. The Resolution Authority shall conclude cooperation agreements with the competent authorities for resolution of another country or international organisations which are responsible for the resolution of a bank which is part of a banking group or a financial group that operates in the Republic of Albania, or vice versa, in order to establish the scope and manner of carrying out the resolution in case of a cross-border group resolution.
2. The Resolution Authority shall communicate with the resolution authorities of other countries where the parent bank has a subsidiary or a branch considered significant for the resolution and shall have the right to participate in the resolution colleges, subject to equivalent confidentiality requirements of information.
3. Cooperation agreements referred to in paragraph 1 of this Article shall establish processes and relationships between participating authorities to exchange the necessary information and also to cooperate in the tasks and the exercise of some or all of the following powers:
  - a) preparation of resolution plans in accordance with the requirements of this law and similar requirements under the legislation of other countries;
  - b) assessment on of resolvability for banks and banking groups, in accordance with the requirements of this Law and similar requirements under the legislation of other respective countries;
  - c) the use of powers to address or remove the impediments to the resolvability, in accordance with the requirements of this Law and similar powers under the legislation of other respective countries;

- d) the use of early intervention measures in accordance with this Law and similar powers under the legislation of other respective countries;
  - e) the use of resolution tools and powers and similar powers exercisable by the relevant authorities of other countries.
4. The Resolution Authority shall inform the Ministry of Finance when such information is related to a decision or a case that requires the notice, consultation or its approval or that may require extraordinary public financial support.
  5. The Resolution Authority shall provide confidential information, including resolution plans, with the authorities of the relevant other countries only if the following conditions are met:
    - a) there is an official request for information from the authorities of the foreign country;
    - b) the authorities of the other countries or international organisations are subject to confidentiality requirements and professional standards deemed to be at least equivalent, in the opinion of the Resolution Authority, and do not contravene with the requirements provided in Article 67 of this Law.

The handling and transmission of personal data to authorities of other countries, is carried out if it shall not contravene with the requests of the legislation in force on the protection of personal data;
    - c) the information is necessary for the resolution authorities of other countries whose functions, on the basis of their legislation, are comparable with the functions under this law and
    - d) the information shall not be used for any other purpose than what is provided for in the cooperation agreements.
  6. When confidential information is requested or came from another country, the Resolution Authority and the Ministry of Finance shall not provide this information to the authorities of other countries unless the following conditions are met:
    - a) the relevant authority which disclosed the information (the authority of origin) gives the consent for disclosure;
    - b) the information is provided only for purposes permitted by the authority of origin.
  7. The Resolution Authority, may decide if it considers it appropriate and taking into account effects on financial stability, accept to recognize and enforce in individual cases the decision of a foreign resolution authority even in the absence of a cooperation agreement with this authority.

**CHAPTER X**  
**RESOLUTION FUND**

**Article 71**

**“Resolution Fund”**

1. The “Resolution Fund” shall be established and shall be used for the purposes of the implementation this Law.
2. The “Resolution Fund” shall be managed by the Deposit Insurance Agency in accordance with the provisions of this Law and sub-legal acts approved for this purpose by the Bank of Albania.
3. The “Resolution Fund” does not have legal personality.
4. Any claim in relation to the “Resolution Fund” shall be addressed to the Resolution Authority.
5. The resolution fund cannot be blocked, sequestered or be subject to compulsory execution.

**Article 72**

**Financial sources of the “Resolution Fund”**

1. The “Resolution Fund” consists of the following financial resources:
  - a) annual contributions paid by the banks;
  - b) extraordinary contributions paid by the banks;
  - c) loans, subsidies and donations. The Loans may be guaranteed by using actual and/or future assets of the “Resolution Fund”;
  - d) incomes from managing the financial resources of the “Resolution Fund”;
  - e) incomes from the repayment of the funds used during the implementation of powers and tools provided in this law;
  - f) incomes from fines collected pursuant to the penalties provided in Article 81 of this Law;
  - g) other financial instruments provided by the Resolution Authority.
2. If the resources and financial means raised as defined under paragraph 1 of this Article are assessed to be insufficient by the Resolution Authority, upon the request of the latter, the resources and financial means may be complemented by a loan from the state budget pursuant to the legislation into force. The loan amount is determined to ensure the stability of the financial system and comply with the sustainability of public finances in the medium and long term perspective. The loan interest rates, in any case, shall not be higher than interest rates of securities with comparable maturities, issued by the government of the Republic of Albania and traded in the Republic of Albania. The “Resolution Fund” cannot be

complemented through loans from the state budget in the cases of shareholders compensation, pursuant to paragraph 9 of Article 68 of this law.

3. The Deposit Insurance Agency shall enter into loan agreements on behalf of the “Resolution Fund”. The repayment of such a loan shall be done through financial resources as defined in paragraph 1 of Article 72 of this Law and shall not include assets or other funds managed or owned by the Deposit Insurance Agency.

## **Article 73**

### **Administration of the “Resolution Fund”**

1. The “Resolution Fund” shall be administered in accordance with the Fund's financial means administration policy approved by the Resolution Authority, upon the proposal of the Deposit Insurance Agency. The investment policy defines the procedures, criteria and concentration and maturity benchmarks, applicable by the Deposit Insurance Agency for investing financial means of the “Resolution Fund”.
2. The administration of the “Resolution Fund” must guarantee the safety of the financial means, high liquidity and low risk profile.
3. The financial means of the Fund shall be invested only in:
  - a) Debt securities issued by the Government of the Republic of Albania or the Bank of Albania, in domestic and foreign currency;
  - b) Debt securities issued by governments and central banks which are, considered investment grade by internationally recognized credit rating agencies;
  - c) Deposits or debt securities issued by international financial institutions which are considered investment grade by internationally recognized credit rating agencies;
  - d) Deposits in the Bank of Albania.
4. The Deposit Insurance Agency, for the purpose of guaranteeing the necessary liquidity for the fulfilment of the obligations that arise from this Law, in addition to operations in financial markets, may sell to the Bank of Albania or the Ministry of Finance, with the obligation to repurchase, securities in which are invested the financial means of the “Resolution Fund”.
5. The Deposit Insurance Agency shall enter into an agreement with the Bank of Albania and/or the Ministry of Finance for the purposes set out in paragraph 4 of this Article.
6. The Deposit Insurance Agency receives an annual payment fee for the reimbursement of costs incurred for funds’ financial assets administration purposes. The amount and method of payment are defined by the Resolution Authority, upon the proposal of the Deposit Insurance Agency.



## **Article 74**

### **Use of funds by the “Resolution Fund”**

1. The Resolution Authority uses the “Resolution Fund” for the following purposes:
  - a) to guarantee the assets or the liabilities of the bank under resolution, its subsidiaries, a bridge bank or an asset management vehicle;
  - b) to provide with liquidity the bank under resolution, its subsidiaries, the bridge bank or the asset management company;
  - c) to purchase assets of the bank under resolution;
  - d) to contribute in capital and ensure other necessary funds to a bridge bank or an asset management company;
  - e) to pay compensation to shareholders or creditors in accordance with Article 58 of this Law;
  - f) to compensate the bank under resolution the uncovered loss arising due to the exclusion of eligible liabilities of certain creditors arising from the application of the bail-in tool in accordance with paragraph 1 of Article 31 of this Law;
  - g) to take any action by combining the possible actions provided in letters “a” to “f” of this paragraph;
  - h) to pay justified costs incurred by the Resolution Authority in relation to the application of the resolution tools or powers if not compensated in accordance with paragraph 4 of Article 25 of this Law;
  - i) to cover the costs for administration of the “Resolution Fund”;
  - j) to repay obligations and loans obtained pursuant to Article 72 of this Law;
  - k) for every payment for damage compensation pursuant to a final administrative or court decision, in accordance with the provisions of this Law.
2. When applying the sale of business tool, the Resolution Authority may use the financial means of the “Resolution Fund” as well as to take actions referred to in paragraph 1, letters “a” to “h” of this Article with respect to the buyer.
3. The financial tools of the “Resolution Fund” are not used to directly absorb the losses or to recapitalise the bank. In the event that the financial means of the “Resolution Fund” are used for the purposes of paragraphs 1 and 2 of this Article the losses of a bank are being absorbed indirectly by this fund and the principles governing the use of the “Resolution Fund” specified in Article 31 of this Law shall apply.
1. The Resolution Authority shall order the Deposit Insurance Agency to transfer the financial means of the “Resolution Fund” in the respective account at the Bank of Albania, pursuant to letters "a" to "h" of paragraph 1 of this Article.

## **Article 75**

### **“Resolution Fund” level**

1. The “Resolution Fund” shall reach 0.5% of the total amount of obligations calculated as a difference between the assets and the capital of all the banks licensed in the Republic of Albania. The period for reaching this amount is 10 years from the date of entering into the force of this Law. The Resolution Authority determines by a sub-legal act the methodology for calculation of this level.
2. The Resolution Authority may extend the initial period of time provided in paragraph 1 of this Article for four years if the financial means of the resolution Fund have been used in progressive amounts for more than 0.25 % of the total amount of obligations calculated as a difference between the assets and the capital of all the banks in the system.
3. When, after reaching the level determined in paragraph 1 of this Article, the financial means of the “Resolution Fund” diminish, the contributions raised in accordance with Article 72 of this Law resume to be raised until the level referred to in paragraph 1 of this Article is reached.
4. When after the completion of the level provided in paragraph 1 of this Article, the financial instruments of the “Resolution Fund” diminish to below the two thirds of the level referred to in paragraph 1 of this Article, the contribution is set at a level allowing for reaching the target level referred to in paragraph 1 of this Article within six years.

## **Article 76**

### **Annual contributions**

1. Banks shall pay to the “Resolution Fund” at the account opened for this purpose at the Bank of Albania, the annual contributions calculated by the Resolution Authority.
2. The Resolution Authority shall determine by a sub-legal act the methodology for the calculation of the annual contribution of banks and the manner it shall be paid.
3. The Deposit Insurance Agency shall confirm to the banks the collection of the annual contributions.

## **Article 77**

### **Extraordinary contributions**

1. Where available financial means of the “Resolution Fund” are not sufficient to absorb the losses, costs and other expenses, the banks shall pay at the bank account of the “Resolution fund” the extraordinary contributions pursuant to the special decision of the Resolution Authority.
2. The extraordinary contribution is calculated proportionally for each bank on the amount determined in accordance with 2 of Article 76 of this Law and may not exceed three times the amount of the last annual contribution paid by each bank.

3. The extraordinary contribution shall be paid within the period provided in the special decision of the Resolution Authority.
4. The Deposit Insurance Agency shall confirm to the banks the receipt of extraordinary contributions.
5. Upon the request by the bank, the Resolution Authority may decide to, entirely or partially, suspend the payment of the extraordinary contribution for this bank if it is necessary to protect its liquidity or solvency. This suspension period shall not exceed 180 days, but can be exceptionally renewed only once for not more than 180 days. The Resolution Authority shall notify the Deposit Insurance Agency on the suspension decided pursuant to this paragraph.
6. The Resolution Authority, through a sub-legal act, establishes the circumstances and conditions under which the paragraph 5 of this Article shall be applied.

## **Article 78**

### **Use of deposit compensation fund when carrying out resolution**

1. When the Resolution Authority applies the resolution tools, ensuring that depositors continue to access their deposits, it shall order the Deposit Insurance Agency to transfer from the bank deposit compensation fund to the respective bank account at the Bank of Albania:
  - a) the amount by which covered deposits would have been written down in order to absorb the losses in case they would have been treated to the same extent as other creditors with the same order of priority during the application of the bail-in tool pursuant to letter “a” of paragraph 1 of Article 30 of this Law;
  - b) the amount of losses that covered deposits would have suffered in case they would have been treated to the same extent as other creditors with the same order of priority, during implementation of the other resolution tools, other than bail-in tool.
2. In any case, the amount of participation in the deposit compensation fund during the application of resolution action shall not be greater than the amount of losses in the case of normal insolvency proceedings.
3. In any case, the Resolution Authority shall ask for the opinion of the Board of Directors of the Deposit Insurance Agency before ordering the use of the bank compensation fund, pursuant to paragraph 1 of this Article.
4. The Board of Directors of the Deposit Insurance Agency shall decide on the conversion of the deposit compensation fund in liquid instruments and its transfer at the relevant account held at the Bank of Albania.
5. When the bail-in tool is applied, in accordance with letter “b” of paragraph 1 of Article 30 of this Law, the deposit compensation fund shall not be used to recapitalize the bank under resolution or the bridge bank.

6. When the valuation referred to in Article 57 of this Law determines that the contribution of the deposit compensation fund was greater than the net losses it would have incurred in normal insolvency proceedings, the Deposit Insurance Agency shall be reimbursed for the payment of the respective difference from the “Resolution Fund” in accordance with Article 58 of this Law.
7. Where eligible deposits at the bank under resolution are transferred to a legal entity through the sale of business tool or the bridge bank tool, the depositors have no claim against the Deposit Insurance Agency in relation to any part of their deposits that are not transferred from the bank under resolution, provided that the total amount of funds transferred is equal to the maximum coverage level provided for in accordance with the legislation in force on deposit insurance.
8. When the deposit compensation fund is used in accordance with this Article and as a result, the fund is reduced, the Board of Directors of the Deposit Insurance Agency has the right to exercise its power to increase or ask in advance for the payment of the quarterly premium payable pursuant to the legislation in force on deposit insurance.
9. When carrying out resolution action, the contribution of deposit compensation fund for the purposes of resolution shall not be greater than 50% of the bank deposit compensation fund, at the moment the order from the Resolution Authority is received, and in any case not more than the losses the bank deposit compensation fund would have incurred under normal insolvency proceedings.

## **Article 79**

### **Administration of funds by Deposit Insurance Agency**

1. The Deposit Insurance Agency maintains specific accounts and financial records for the “Resolution Fund”, in order to have at any time a clear and accurate overview of its financial situation in accordance with the legislation in force on accounting and financial statements as well as with international standards.
2. At the end of each financial year the Deposit Insurance Agency prepares a report and provide with financial accounts of this fund, with regard to its administration.
3. The financial year starts on 1-st of January and ends on 31-st of December.
4. The annual financial statements of the “Resolution Fund” shall be certified by specialized external auditors, approved by the Board of Directors of Deposit Insurance Agency in accordance with the legislation in force on deposit insurance, after consultation with the Resolution Authority.
5. Annual Report on investment activity and audited financial statements with regard to “Resolution Fund” administration shall be presented to the Bank of Albania not later than three months after the end of the financial year.

6. The Deposit Insurance Agency publishes on its website the annual report on investment activity and audited financial statements of the “Resolution Fund”.

## **CHAPTER XI**

### **PENALTIES**

#### **Article 80**

##### **Cases to impose penalties**

1. The Bank of Albania shall impose penalties to the bank, the bank's administrators, or other employees of the bank, when it determines that the bank:
  - a) does not draw up and update recovery plan;
  - b) does not provide the information and necessary data for the process of drawing up and updating the resolution plan;
  - c) does not inform the Supervisory Authority for the intra-group financial support agreements;
  - d) does not maintain or update the list of financial contracts;
  - e) fails to deliver within the defined time frame, the proposal for measures to be taken to remove impediments;
  - f) fails to deliver a plan within the defined time frame, in compliance with the decision of the Resolution Authority;
  - g) does not remove impediments for the application of the bank resolution action, or when, within the specified time limit fails to provide a plan in accordance with the required measures, or fails to comply with a decision adopted pursuant to Article 65 of this Law;
  - h) contrary to paragraph 1 of Article 64 of this Law, does not inform the Bank of Albania, where it considers that it meets any of the conditions mentioned in paragraph 2 of Article 22 of this Law;
  - i) does not draw up within the period prescribed in Article 39 of this Law, the plan for the reorganization of business activity, or when the content of the plan does not comply with the requirements of the sub-legal act of the Resolution Authority;
  - j) or any member of the same group does not comply with the requirements of the Resolution Authority under the provisions of this Law;
  - k) does not pay annual contributions to the “Resolution Fund”;
  - l) does not pay extraordinary contributions to the “Resolution Fund”;
  - m) acts to the contrary of the sub-legal acts approved by the Resolution Authority, pursuant to this Law.

2. In the case of the infringements as defined in paragraph 1, letters “k” and “l” of this Article the application of penalties shall be commenced with the proposal of the Deposits Insurance Agency.

## **Article 81**

### **Penalties**

1. If it is determined that there are infringements as provided in Article 80 of this Law, the Resolution Authority shall impose the following penalties:
  - a) orders the bank, bank managers or bank employee responsible for the infringement to cease and desist the conduct and remedy the ascertained violation;
  - b) orders temporary suspension from the exercise of the functions of the bank managers or any other employees of the bank responsible for the infringement;
  - c) imposes to the bank that has committed the infringement, a fine from ALL 1,000,000.00 up to the higher value between ALL 10,000,000.00 and 10% of the bank's profit, based on previous year financial statements;
  - d) imposes to bank administrators, or employee responsible for the infringement, a fine from ALL 100,000.00 to ALL 1,000,000.00;
  - e) imposes to the person responsible for the infringement a fine up to twice the amount benefitted from the infringement, where that benefit can be identified.Fines constitute executive titles and for their enforcement the bailiff's office is responsible.
2. In the case of delay of the payment of annual and extraordinary contributions to the “Resolution Fund”, the bank pays interests equal to the interest rate of Liquidity Supporting Loan of the Bank of Albania, for the entire period until the payment of the contribution has taken place.

## **Article 82**

### **Effective application of penalties**

When determining the type of administrative penalties or other administrative measures and the level of administrative fines, the Resolution Authority shall take into account all the relevant circumstances, including where appropriate:

- a) the gravity and the duration of the infringement;
- b) the degree of responsibility of the natural or legal person responsible;
- c) the financial position of the natural or legal person responsible;
- d) the amount of profits or losses avoided by the natural or legal person responsible, insofar as they can be determined;
- e) the losses to third parties caused by the infringement, insofar as they can be determined;

- f) the level of cooperation of the natural or legal person responsible with the Supervisory Authority and the Resolution Authority;
- g) previous infringements by the natural or legal person responsible;
- h) any potential systemic consequences of the infringement.

## **Article 83**

### **Publication of administrative penalties**

1. The Resolution Authority publishes on its official website the administrative penalties imposed by it for infringing the provisions of this law. Such publication shall be made without undue delay after the natural or legal person is informed of that penalty including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty is imposed.
2. In case of publication of penalties against which there is an appeal, the Supervisory Authority and the Resolution Authority publish on their official websites information on the status of that appeal and the outcome thereof.
3. The Resolution Authority shall publish the penalties imposed by it on an anonymous basis, (by hiding the identifying data), in any of the following circumstances:
  - a) where the penalty is imposed on a natural person and publication of personal data, is shown to be disproportionate in relation to the infringement;
  - b) where publication jeopardises the stability of financial markets or an on-going criminal investigation;
  - c) where publication causes, insofar as it can be determined, significant damages to the bank or natural persons involved.

For the cases provided in this paragraph, the publication of the data may be postponed for a reasonable period of time, if it is foreseeable that the reasons for anonymous publication will cease to exist within that period.

4. The Resolution Authority shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years. Personal data contained in the publication shall only be kept on the official website of the Resolution Authority for the period which is necessary in accordance with applicable data protection rules.

## **CHAPTER XII**

### **ADMINISTRATIVE AND JUDICIAL APPEAL**

#### **Article 84**

##### **Administrative appeal**

1. Any natural or legal person claiming that its rights or legal interests are infringed upon by administrative acts taken pursuant to the provisions of this Law, has the right to lodge an administrative appeal within 30 days starting from the day of receipt of the information on the issuance of such act. The administrative appeal shall be filed with:
  - a. the Supervisory Council of the Bank of Albania, in case the administrative act is issued by this administrative body;
  - b. the Governor of the Bank of Albania, in case the administrative act is issued by the Governor, or by other bodies of the Bank of Albania.
2. The lodging of the appeal referred to in paragraph 1 of this Article does not suspend the execution of the decision to initiate resolution actions on the bank or of other decisions adopted by the Resolution Authority.
3. The administrative appeal shall be made in such a form and shall be scrutinised within the deadlines provided in the Code of Administrative Procedure.
4. The administrative appeal according to this Article is a condition which precedes the appeal with the court.

## **Article 85**

### **Judicial appeal**

1. The person referred to in paragraph 1 of Article 84 of this Law, has the right to lodge an appeal with the Administrative Court of Appeal, upon the end of the process of the administrative appeal.
2. The judicial appeal pursuant to paragraph 1 of this Article shall be made according to the procedures provided in the legislation in force for administrative courts and administrative disputes.

## **CHAPTER XIII**

### **FINAL PROVISIONS**

## **Article 86**

### **Legal protection while on duty**

1. The Bank of Albania, in its role as the Resolution Authority, Supervisory Council members, administrators and its employees, the Deposit Insurance Agency, its structures and employees are not responsible for damages caused to third parties by actions or omissions



when exercising their duties and fulfilling their legal responsibilities provided in this law even after they are removed from their duties.

2. Provisions of paragraph 1 of this Article shall not apply if the abovementioned persons have acted, in bad faith or benefiting by intentionally failing to respect their duties and responsibilities. In this case they are obliged to answer for the damages caused to natural or legal entities.
3. The provisions of the legislation in force for the extra contractual liability of state administration bodies do not apply to determine the liability of the Bank of Albania, as well as its bodies or employees.

## **Article 87**

### **Administrative appeal**

For the application of this law, the Bank of Albania shall adopt sub-legal acts.

## **Article 88**

### **Transitory provisions**

1. The banks shall start to pay their contribution to the “Resolution Fund” within 6 months from the entry into force of this law, after the notification by the Resolution Authority.
2. Bank of Albania within 6 months from the entry into force of this law, shall take the appropriate measures to create the organizational unit according to Article 6 of this Law.

## **Article 89**

### **Entry into force**

1. This Law, except for paragraph 3 of Article 6, shall enter into force 6 months after its publication in the Official Gazette.
- 2.
3. Paragraph 3 of Article 6 of this Law shall enter into force 15 days after its publication in the Official Gazette.