



REPUBLIC OF ALBANIA
BANK OF ALBANIA
SUPERVISORY COUNCIL

DECISION
No.20, dated 7.4.2021

**APPROVAL OF THE REGULATION “ON THE CONTRACTUAL RECOGNITION OF WRITE-DOWN
AND CONVERSION POWERS”**

In accordance with Article 12 “a” and Article 43 “c” of the Law No. 8269, dated 23.12. 1997 “On the Bank of Albania,” as amended; with Article 42 paragraph 6 and with Article 87 of the Law No. 133/2016, dated 22.12. 2016 “On the recovery and resolution of banks in the Republic of Albania”; having regard to the proposal from the Resolution Department, the Supervisory Council of the Bank of Albania,

DECIDED:

1. To approve the Regulation “On the contractual recognition of write-down and conversion powers”, provided therein.
2. The Resolution Department is responsible for the implementation of this Decision.
3. Banks licensed by the Bank of Albania are responsible for the implementation of this Decision.
4. The Governor’s Office and the Research Department are responsible for the publication of this Decision in the Official Journal the Republic of Albania and in the Official Bulletin of the Bank of Albania respectively.

This Decision shall enter into force 15(fifteen) days following its publication in the Official Journal of the Republic of Albania.

SECRETARY

CHAIR

Elvis ÇIBUKU

Gent SEJKO

REGULATION

“On the contractual recognition of write-down and conversion powers”

Article 1

Subject matter

This Regulation lays down the content of contractual terms as regards the contractual recognition of write-down and conversion powers and the liabilities to which the exclusion from the obligation to include the contractual term applies.

Article 2

Subjects

Subject to this Regulation are the banks and the branches of foreign banks, licensed by the Bank of Albania.

Article 3

Legal grounds

This Regulation is issued pursuant to:

- a. Article 12 “a” and Article 43 “c” of the Law No. 8269, dated 23.12.1997 "On the Bank of Albania,” as amended;
- b. Article 31, paragraph 3, Article 42, paragraph 6 and Article 87 of the Law No. 133, dated 22.12.2016 “On the recovery and resolution of banks in the Republic of Albania,” following referred as the Law No. 133/2016.

Article 4

Definitions

For the purposes of this Regulation, the following definitions apply:

- a. “relevant agreement” means any agreement, including the terms of a capital instrument, creating a liability to which Article 42(1) and (2) of the Law No. 133/2016 of applies.

Article 5

Content of the contractual terms

Contractual terms to which banks include a relevant agreement in compliance with Article 42 of the Law No. 133/2016, shall include the following:

1. the acknowledgement and acceptance by the counterparty that the liability might be subject to the exercise of the write-down and conversion powers by the Resolution Authority;

2. the description of the write-down and conversion powers of the Resolution Authority in accordance with the Law No. 133/2016;
3. the acknowledgement and acceptance by the counterparty:
 - a. that it is bound by the exercise of the powers referred to point “b” including:
 - i. any reduction in the principal amount or outstanding amount due, including any accrued but unpaid interest, in respect of the liability of the bank under the relevant agreement;
 - ii. the conversion of that liability into ordinary shares or other instruments of ownership;
 - b. that the terms of the relevant agreement may be varied as necessary to give effect to the exercise by the Resolution Authority of its write-down and conversion powers and such variations will be binding on the counterparty of the bank
 - c. that ordinary shares or other instruments of ownership may be issued to or conferred on the counterparty of the bank as a result of the exercise of the write-down and conversion powers;
4. the acknowledgement and acceptance by the counterparty that the contractual term is exhaustive on the matters described therein to the exclusion of any other agreements, arrangements or understandings between the counterparties relating to the subject matter of the relevant agreement.

Article 6

Secured (guaranteed) liabilities to which inclusion of contractual terms applies

1. For the purposes of point “a” of the second subparagraph of Article 42 of the Law No. 133/2016 and pursuant to paragraph 3 of Article 31 of this Law, a liability shall not be considered as an excluded liability and shall include the contractual term in accordance with Article 5 of this Regulation, where, at the time at which it is created, it is:
 - a. not fully secured (guaranteed);
 - b. fully secured but governed by contractual terms that do not oblige the debtor to maintain the liability fully collateralised (guaranteed) on a continuous basis.

Article 7

Liabilities to which exclusion from contractual terms applies

1. For the purposes of paragraph 3 of Article 43 of the Law No. 133/2016, the Resolution Authority shall not require the inclusion of contractual terms, pursuant to Article 5 of this Regulation, when it deems that the law of the other country which regulates liabilities, or an

agreement related to the relevant authority of the other country, provides for an administrative or judicial procedure which:

- a. at the request of the Resolution Authority, or at the initiative of the other country, whose law governs the liability or instrument, enables such duly empowered other country administrative or judicial authority, within a period which the Resolution Authority determines that will not compromise the effective application of the write-down and conversion powers by that authority to:
 - i. recognise and give effect to the exercise of the write-down and conversion powers by the Resolution Authority;
 - ii. support through the application of relevant powers the exercise of the write-down and conversion powers by the Resolution Authority;
 - b. provides that the grounds on which the other country administrative or judicial authority may refuse to recognize or support the exercise of the write-down and conversion powers pursuant to point “a” are clearly stated and are limited to one or more of the following exceptional cases:
 - i. the recognition or support of the exercise of the write-down and conversion powers by the Resolution Authority would have adverse effects on financial stability in the other country;
 - ii. the recognition or support of the exercise of the write-down and conversion powers by the Resolution Authority would result in the other country creditors, in particular depositors located and payable in that other country, being treated less favourably than creditors, and depositors located or payable in Albania, with similar rights under applicable Albanian law;
 - iii. recognition or support would have material financial implications for the other country concerned;
 - iv. recognition or support of the exercise of write-down and conversion powers by the Resolution Authority would have effects contrary to the public order of the other country concerned.
2. For the purposes of the application of the third paragraph of Article 42 of the Law No. 133/2016, the Resolution Authority shall assess that the ground referred to in paragraph 1(b) of this Article would not prevent the recognition or support of the exercise of the write-down and conversion powers in all circumstances where such powers are applied.

CHAIR OF SUPERVISORY COUNCIL

Gent SEJKO