



REPUBLIC OF ALBANIA
BANK OF ALBANIA
SUPERVISORY COUNCIL

DECISION
No. 61, dated 4.11.2020

ON
APPROVAL OF REGULATION “ON DETERMINING THE CONDITIONS FOR APPLYING
EARLY INTERVENTION MEASURES AND ON THE CONDITIONS AND MANNER OF
CARRYING OUT THE TEMPORARY ADMINISTRATION”

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 17, paragraph 3 and with Article 19, paragraph 13 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 Supervision Department, the Supervisory Council of the Bank of Albania,

DECIDED:

1. To approve the Regulation “On determining the conditions for applying early intervention measures and on the conditions and manner of carrying out the temporary administration”, as provided therein.
2. The Supervision Department at the Bank of Albania shall implement this Decision.
3. The Governor’s Office and the Research Department shall be responsible for publishing this Decision respectively in the Official Journal of the Republic of Albania and in the Official Bulletin of the Bank of Albania.

This Decision shall enter into force on 30 June 2021.

SECRETARY

DEPUTY CHAIR

Elvis ÇIBUKU

Luljeta MINXHOZI

REGULATION

“ON DETERMINING THE CONDITIONS FOR APPLYING EARLY INTERVENTION MEASURES AND ON THE CONDITIONS AND MANNER OF CARRYING OUT THE TEMPORARY ADMINISTRATION”

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

This regulation lays down the conditions for applying early intervention measures and the conditions and manners of carrying out the temporary administration.

Article 2 Legal grounds

1. 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 17, paragraph 3 and Article 19, paragraph 13 of the Law No. 133/2016, dated 22.12.2016 “On the recovery and resolution of banks in the Republic of Albania” (following referred as the Law “On the recovery and resolution”).

Article 3 Definitions

1. The terms used in this Regulation shall have the same meaning with those defined in Article 4 of the Law “On the banks in the Republic of Albania” and in the Article 4 and Chapter IV of the Law “On the recovery and resolution.”
2. In addition to what is provided for in paragraph 1, for the purposes of the implementation of this Regulation, the following terms have these meanings:
 - a) “Early intervention measures” are the early intervention measures set out in Article 17 of the Law “On the recovery and resolution”;
 - b) “Supervisory Review and Evaluation Process” (SREP) is an integral part of the supervisory process exercised by the Bank of Albania, as defined in the requirements of the Guideline No. 26 dated 3.5.2017 “On the internal capital adequacy assessment process”;
 - c) “Bank’s overall assessment” is the assessment based on the scores determined for each of the SREP elements, and takes into consideration all the available information on the bank;

- d) “Assessment of the risk elements” is the assessment which takes into consideration the assessment of quantitative and qualitative risk elements;
 - e) “Overall SREP score” is the numerical indicator of the overall risk of the bank’s stability, based on the bank’s overall assessment.
3. For the purposes of this Regulation, the Bank of Albania is the Supervisory Authority, as defined in Article 6, paragraph 2 of the Law ” On the recovery and resolution”.

CHAPTER II DETERMINING THE CONDITIONS FOR EARLY INTERVENTION MEASURES

Article 4 Conditions for applying early intervention measures

1. Bank of Albania shall decide on whether to apply early intervention measures, when at least one of the following conditions is met:
 - a) the overall score for the bank, based on SREP, is 6; or
 - b) the overall score for the bank, based on SREP, is 5 and the score of at least one of the following SREP elements is 6:
 - i. internal governance and control systems,
 - ii. credit risk,
 - iii. liquidity risk,
 - iv. strategic risk and business model,
 - v. capital assessment based on SREP,
 - vi. liquidity assessment based on SREP;
 - c) when material changes or anomalies in SREP indicators are identified, as defined in Article 5 of this Regulation; or
 - d) when significant events occur as defined in Article 6 of this Regulation.
2. In cases when the conditions provided for in paragraph 1 of this Article are met, the Bank of Albania shall:
 - a) carry out the necessary investigations and document the causes that may lead to apply early intervention measures; and
 - b) assess the urgency of the situation and the significance of the problem within the overall situation of the bank, in order to decide on the type of early intervention measures to be applied.
3. Bank of Albania shall document all the information related to the identification of similar conditions/situations, of the results of further investigations and of the decision-making on the application of early intervention measures, as well as the relevant reasons in the case of not taking early intervention measures.

4. When deciding to apply an early intervention measure, the Bank of Albania shall take into account the measures specified in the recovery plan that the bank has taken or has decided to take in the immediate future.
5. In cases when the Bank of Albania assigns to the bank an overall SREP score of '6' it shall consider gathering all the necessary information for the valuation of the bank's assets and liabilities, as provided for in Article 17, paragraph 1(dh) of the Law "On the recovery and resolution".
6. In cases when Bank of Albania decides to apply early intervention measures based on the above SREP results (scores) and for choosing the most appropriate measure, the Bank of Albania shall address the particular weaknesses identified and highlighted in the narrative of the overall SREP assessment or the assessment of a particular SREP element.
7. Provided that the bank meets conditions for early intervention, the Bank of Albania shall decide to apply early intervention measures immediately upon determination of the cause and of the overall impact without updating the assessment of the respective SREP element. The assessment of the respective SREP element and the overall SREP assessment shall be subsequently updated without undue delay.

Article 5

Monitoring of indicators under SREP

1. The risk assessment process requires the Bank of Albania to carry out regular monitoring of SREP indicators for all banks.
2. Identification of material changes and anomalies in indicators, including breaches of thresholds, shall be considered by the Bank of Albania as a prompt for further investigation, and, where relevant, it shall review the assessment of the SREP elements, in light of the new information. Specifically, the Bank of Albania shall:
 - a) determine the cause and make an assessment of materiality of the potential impact on a bank and, where relevant, engage in an effective dialogue with the bank;
 - b) document the cause(s) and outcomes of the assessment; and
 - c) review the risk assessment and SREP score, where relevant, in light of any material new finding.
3. Where the bank's financial condition and risk outlook for particular SREP elements significantly deteriorate and impact one of the conditions based on the combination of the overall SREP score and scores for individual SREP elements, the Bank of Albania shall take a decision on whether to apply early intervention measures.
4. Without prejudice to paragraph 3 of this Article, in certain circumstances, the Bank of Albania may use directly material changes or anomalies in indicators for deciding the application of early intervention measures.

Article 6

Significant events

1. Certain events may have a significant impact on the bank's financial conditions, putting it into a situation where conditions for early intervention are met relatively rapidly, by altering or not the overall score of the bank, based on SREP, as specified in Article 4 of this Regulation.
2. Examples of significant events, but not only, that may put the bank in a situation where conditions for early intervention are met may include:
 - a) major operational risk events (e.g. fraud, natural disaster, IT problems, significant fines imposed by public authorities);
 - b) significant decrease of the amount of eligible liabilities and own funds held by the bank for the purposes of meeting the minimum requirements for own funds and eligible liabilities;
 - c) signals of the need to review the quality of assets and/or conduct independent valuation of specific portfolios/assets, for instance:
 - i. outcomes of on-site examinations, reports of borrowers from the Credit Registry, periodical reports etc.,
 - ii. the external auditor's opinion on the financial statements of the bank, indicating/emphasising material uncertainty,
 - iii. events of possible financial effects or on other bank indicators, which are not yet reflected on the financial statements of the bank,
 - iv. perpetual and material adjustments to the bank's financial statements, due to errors in valuation of assets/liabilities and frequent changes in the accounting assumptions;
 - d) significant outflow of funds, including retail deposits of customers, caused, e.g. by the reputational damage of the bank;
 - e) unexpected departures of Steering Council members or senior management staff, who have not been replaced;
 - f) one or more members of the Steering Council fail to comply with legal and regulatory requirements on bank's administrators, to become or remain a member of the Steering Council;
 - g) significant rating downgrades by one or more external rating agencies, potentially leading to significant withdrawal of funds, inability to renew funding contracts or activation of certain contractual terms related to the rating of the bank by these agencies.
3. Upon becoming aware of the occurrence of a significant event, the Bank of Albania shall identify its cause, assess its potential impact on the bank and, where relevant, engage in an effective dialogue with the bank, and document its assessment.

4. In certain circumstances significant events may be used as condition for the decision on the application of early intervention measures. In particular, depending on the magnitude of the significant event and on the materiality of the potential prudential impact on the bank and provided the bank meets the conditions for early intervention, the Bank of Albania may decide to apply early intervention measures, immediately upon determination of the cause and the overall impact, without updating the assessment of the respective SREP element. The assessment of the respective SREP element and the overall SREP assessment should nevertheless be subsequently updated without undue delay.
5. In case the Resolution Department commences a consultation process with the Supervision Department for determining whether a bank is failing or likely to fail , the Supervision Department shall consider this as a significant event in order to assess the application of early intervention measures, to maintain or restore its rentability and to prevent the bank’s failure.

CHAPTER III TEMPORARY ADMINISTRATION

Article 7

Conditions for carrying out the temporary administration

1. Where the bank does not apply early intervention measures required by the Bank of Albania, caused by a significant deterioration of the bank’s financial conditions or serious breaching of the legislation on banks and other regulations or bank’s statute, and in case these measures should not be sufficient to correct the financial condition of the bank, the Bank of Albania may order the dismissal of one or several bank’s administrators, members of the Steering Council and/or Directorate and appoint new administrators.
2. Where the bank does not fulfil the requirement set out in paragraph 1 of this Article, or when the replacement of administrators by the bank is deemed to be insufficient to remedy the bank’s financial condition, the Bank of Albania shall have the right to appoint one or more temporary administrators for the bank.
3. The temporary administrator, appointed pursuant to this Article, shall fulfil all qualifying and disqualifying criteria for bank’s administrators provided for in the Law “On the recovery and resolution”, in the Law “On banks in the Republic of Albania” and the sub-legal acts issued for its implementation.

Article 8

Decision on the appointment of the temporary administrator

1. The decision on the appointment of the temporary administrator and the duties he/she shall be in charge of, shall be taken by the body at the Bank of Albania as set out in the Regulation “On determining the level of competencies exercised by the Bank of Albania on the recovery and resolution in banks.”

2. The Decision referred to in paragraph 1 of this Article, shall contain at least:
 - a) the appointment of the temporary administrator;
 - b) the objectives and tasks of the temporary administrator.
 - c) whether the temporary administrator shall replace the Steering Council and/or the executive directors of the bank, or shall jointly manage the bank with these bodies, as well as his duties and competencies;
 - d) the separation of competencies between the temporary administrator and the Steering Council and/or the executive directors of the bank, and the legal acts in relation to which these bodies shall obtain the opinion and/or approval of the temporary administrator - in case the bank is jointly administered by the temporary administrator and these bodies;
 - e) the deadlines and the reporting method to the Bank of Albania;
 - f) the remuneration of the temporary administrator;
 - g) the term of the temporary administrator.
3. The decision on the appointment, dismissal or replacement of the bank's temporary administrator, when authorised to represent the bank in its relations with third parties, shall be registered in the National Business Center (NBC) within 5 (five) days following the date of the adoption of this decision. The decision shall be published on the official website of the Bank of Albania and in the Official Bulletin of the Bank of Albania.

Article 9

Temporary administrator's competencies and duties

1. The temporary administrator shall exercise the competencies and fulfil the duties set out in the Law "On the recovery and resolution" and in the decision for carrying out the temporary administration and shall be responsible for non-compliance with his assigned duties to the Bank of Albania.
2. The Bank of Albania shall determine the competencies and duties of the temporary administrator, in accordance with the competencies of the Steering Council and/or executive directors, as well as with the rights, duties and competencies of the members of these bodies set out by law, bank's statutes and in the Law "On entrepreneurs and commercial companies."
3. The competencies of the temporary administrator shall be determined in a manner such as to clearly separate his/her responsibilities and relationships to other bodies of the bank, which may include participation in the meetings of the Steering Council and of bank's directors, call for meetings of these bodies and other bank's committees, by proposing the agenda of such meetings, by proposing the adoption of appropriate decisions, demanding adequate reports from the Steering Council, as well as from other committees and relevant units of the bank etc.
4. The objectives and tasks of the temporary administration may be linked to determining the true financial condition of the bank, managing all or part of the bank's activity, aiming to preserve and restore the appropriate financial position of the bank and/or its safe and sound activity, supervising the activities set out in the

decision of the Bank of Albania, supervising the carrying out of activities by the Steering Council or the executive directors and other bank's committees.

5. In cases when the decision for appointing a temporary administrator stipulates that the administrator shall replace the Steering Council and/or the executive directors of the bank, the functions of the members of these bodies shall end following the date of entry into force of the decision on carrying out the temporary administration, and their functions shall be transferred to the temporary administrator.
6. The bank shall give the temporary administrator access to all organisational units and bank's premises, allow for his communication with the managers/administrators and employees of the bank and provide data on the bank's activity and other documents necessary to fulfil the aforementioned objectives and duties.
7. If the Supervisory Authority appoints the temporary administrator for cooperating with the Steering Council of the bank, then the Steering Council and the executive directors of the bank shall first obtain from the temporary administrator his/her preliminary consent and/or an opinion on specific legal acts and actions undertaken by these bodies, which are set out in the decision for carrying out the temporary administration. The legal acts or actions may be, but without being limited to, the approval of credit and of the provision of other financial services to persons in a special relationship with the bank, bank lending, bank's investments on assets and other legal entities, bank's asset sales, introduction of new products, determination of remuneration for the members of the bank's steering bodies and administration, including bonuses and rewards payed to these persons or other employees of the bank.
8. The temporary administrator, before every bank's assembly meeting and bank's assembly agenda definition, shall obtain the prior consent of the Bank of Albania, which may stipulate in the decision for carrying out the temporary administration that such consent shall also be obtained before undertaking certain legal acts.

Article 10

Reporting by the temporary administrator

1. If not provided otherwise in the decision on the appointment of the temporary administrator, the latter, within 30 days from the date of appointment, shall submit to the Bank of Albania a report on the activity and financial condition of the bank, which consists of an assessment of the financial condition and prospects of the bank regarding the improvement of its activities.
2. If the decision for carrying out the temporary administration stipulates that the temporary administrator shall manage the bank jointly with the Steering Council and the executive directors of the bank, the report shall also be submitted to these bodies, which may file objections against the report and may submit them to the temporary administrator and the Bank of Albania, within five days from the date of the receipt of the report.

3. The temporary administrator shall give his/her opinion to the Bank of Albania on the abovementioned objections, within five days from the date of their receipt.
4. The temporary administrator, in addition to the report, shall submit to the Bank of Albania an action plan on the fulfilment of the objectives and tasks during all the period of his/her term.
5. The temporary administrator shall submit to the Bank of Albania, at least on a quarterly basis as well as anytime it is requested from the Bank of Albania, a report on the actions undertaken for the fulfilment of the objectives and tasks, the degree in which these objectives and tasks have been fulfilled, as well as the planned actions and deadlines for their implementation in the following period.
6. The temporary administrator shall immediately notify the Bank of Albania on any circumstance that may lead to the bank's failure to implement the imposed measures and to the deterioration of the bank's financial condition, as well as on the planned distribution of the bank's profit to its shareholders, members of the steering bodies and employees, if he/she assesses that such a distribution may lead to an infringement with the legal requirements and current regulations.
7. On the basis of the abovementioned reports and information and other available data, the Bank of Albania may take anyone of the supervisory measures set out in the Law "On banks in the Republic of Albania", and/or place the bank in special administration, in case it assesses that this might contribute to achieve the resolution objectives.

Article 11 **Remuneration of the temporary administrator**

1. The Bank of Albania shall determine the remuneration of the temporary administrator, by taking into account in particular:
 - a) the area of the implementation of duties, competencies and tasks of the temporary administrator, provided for in the decision for carrying out the temporary administration;
 - b) the average monthly wage of the members of the Steering Council and executive directors over the three months prior to the approval of the decision on the carrying out of the temporary administration;
 - c) the total assets predicted to be managed during the term of the temporary administrator;
 - d) the financial condition of the bank; and
 - e) other relevant data for the determination of this remuneration.
2. The remuneration of the temporary administrator shall be paid by the bank, which has been placed in temporary administration.

Article 12

Term of the temporary administrator

1. The temporary administrator shall be appointed for a term no longer than one year, which may be extended only by a Bank of Albania decision and if the conditions for temporary administration persist.
2. In case of extension of the term, the temporary administrator shall inform the bank's shareholders on the reasons for this extension.
3. The Bank of Albania, during the term of the temporary administrator, may issue, at any time, a decision for his/her dismissal and may also change the competencies and tasks of the temporary administrator set out in the decision on the carrying out of the temporary administration.
4. In the cases when the Bank of Albania assesses that the temporary administrator does not comply with the reporting deadlines and does not fulfil the tasks and objectives determined by the Bank of Albania in the decision on the appointment, it shall decide on the early termination of the temporary administrator's term.

Article 13

Termination of temporary administration

1. The Bank of Albania shall terminate the temporary administration:
 - a) upon expiry of the deadline set out in the decision on the appointment of the temporary administrator and/or in the decision on the extension of the temporary administrator's term;
 - b) prior to the expiry of the deadline, if the Bank of Albania assesses that the objectives and duties have been fulfilled, or the financial condition of the bank has improved, to the extent that the temporary administration is no longer necessary;
 - c) upon carrying out the special administration;
 - d) upon placement of the bank in resolution; and
 - e) upon liquidation commencement.
2. In the case set out in paragraph 1 of this Article, the Bank of Albania shall issue a decision on the termination of the temporary administration, which shall be presented to NBC, in order for it to register the termination of the temporary administration.

DEPUTY CHAIR OF SUPERVISORY COUNCIL

Luljeta MINXHOZI