

Pursuant to Article 128r, paragraph 5 of the Law on Banks (RS Official Gazette, Nos 107/2005, 91/2010 and 14/2015) and Article 15a, paragraph 1 of the Law on the National Bank of Serbia (RS Official Gazette, Nos 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012 and 14/2015), the Executive Board of the National Bank of Serbia issues the following

**D E C I S I O N**  
**ON THE MINIMUM REQUIREMENT FOR CAPITAL AND ELIGIBLE**  
**LIABILITIES OF A BANK**

1. This decision sets out detailed conditions under which eligible liabilities of a bank referred to in Article 128q, paragraph 3 of the Law on Banks (hereinafter: the Law) are included in the calculation of the minimum requirement for capital and eligible liabilities, as well as detailed criteria for determining that requirement.

**Conditions for the inclusion of eligible liabilities in the calculation of the minimum requirement for capital and eligible liabilities**

2. Eligible liabilities of a bank shall be included in the calculation of the minimum requirement for capital and eligible liabilities if they meet the following conditions (qualifying eligible liabilities):

- 1) the instrument giving rise to the bank's liability has been issued and fully paid and if it is a deposit, the principal amount giving rise to the deposit liability has been paid to the bank;
- 2) in case of these liabilities, the bank itself is not a creditor, nor has it issued a guarantee, warranty or other collateral against such liabilities;
- 3) the bank has not directly or indirectly financed the investment in such instrument and/or liability;
- 4) the remaining maturity for the liability is minimum a year;
- 5) the liability does not stem from a derivative;
- 6) the liability does not stem from an insured deposit;
- 7) the liability does not stem from a deposit whose purpose is to secure the bank's receivable, or the liability does stem from such a deposit, and the amount of the liability exceeds the amount of the receivable – by the difference between the amount of the liability and the amount of the receivable.

If the liability referred to in paragraph 1 of this Section entitles the creditor to an early repayment option, the maturity referred to in provision 4) in that paragraph shall be the first date on which the creditor may request early repayment.

3. Calculation of the minimum requirement for capital and eligible liabilities shall not include eligible liabilities stemming from contractual relations governed by foreign law if such law prevents the implementation of the National Bank of Serbia's decision on conversion to equity or write-down (reduction) of the principal amount of liabilities or debt instruments.

The National Bank of Serbia may request from the bank to submit appropriate evidence showing that the decision of the National Bank of Serbia referred to in paragraph 1 of this Section may be implemented under the applicable law.

### **Criteria for determining the minimum requirement for capital and eligible liabilities**

4. For the purpose of application of the criteria laid down in Article 128r, paragraph 3, item 1) of the Law, the National Bank of Serbia shall establish the feasibility of achieving resolution objectives by applying available resolution tools, in particular the bail-in tool.

5. In order to apply the criteria laid down in Article 128r, paragraph 3, item 2) of the Law, the National Bank of Serbia shall establish the amount of losses the bank should be able to cover prior to its resolution (hereinafter: loss coverage amount) and the amount required to restore, after the loss coverage, the capital adequacy ratio to a level necessary to ensure further smooth operation of the bank and to sustain sufficient market confidence in the bank (hereinafter: recapitalisation amount).

The loss coverage amount shall be the amount required to meet the prescribed minimum capital adequacy ratio for the bank, and/or capital adequacy ratio which the National Bank of Serbia determined for a bank, pursuant to Article 23, paragraph 3 of the Law.

The recapitalisation amount shall be the amount needed to apply the resolution measures and tools envisaged by the resolution plan equalling, as a minimum, the amount needed to meet the prescribed minimum capital adequacy ratio, and/or capital adequacy ratio that the National Bank of Serbia determined for the bank pursuant to Article 23, paragraph 3 of the Law. If the National Bank of Serbia deems it necessary for achieving and sustaining market confidence in the bank, it may increase this amount by no more than the amount of the combined capital buffer requirement applicable to that bank, in accordance with the NBS decision governing the capital adequacy of banks.

Notwithstanding paragraph 3 hereof, if the bank's resolution plan does not envisage implementation of resolution tools, but only bankruptcy and/or liquidation of the bank, the recapitalisation amount shall equal zero, except in case the National Bank of Serbia has established that a certain amount of recapitalisation must be ensured so that the bankruptcy and/or liquidation procedure can achieve resolution objectives pertaining to the stability of the financial system and continuity in the performance of critical functions of the bank.

6. When applying the criteria laid down in Article 128r, paragraph 3, item 3) of the Law, the National Bank of Serbia shall assess which eligible liabilities of the bank would probably be exempt from the application of the bail-in tool or transferred by application of another resolution tool in accordance with the resolution plan.

Upon identifying the liabilities referred to in paragraph 1 of this Section, the National Bank of Serbia shall make sure that the minimum requirement for capital and eligible liabilities is determined in the amount ensuring an adequate coverage of losses and recapitalisation of the bank without the write-down and/or conversion of those liabilities, in the manner which does not jeopardise the principles from Article 128b, paragraph 1, items 2) and 3) of the Law.

7. When applying the criteria laid down in Article 128r, paragraph 3, item 4) of the Law, the National Bank of Serbia shall assess whether capital requirements applied to the bank, other measures in the supervision procedure and measures to reduce or remove impediments to resolvability adequately reflect the size, business model, funding model and risk profile of the bank and whether there is a need to determine a higher or lower minimum requirement for capital and eligible liabilities in order to address potential disproportions.

8. When applying the criteria laid down in Article 128r, paragraph 3, item 5) of the Law, the National Bank of Serbia shall make sure that the minimum requirement for capital and eligible liabilities is determined in the amount which ensures compliance with the limits prescribed by Article 128z of the Law.

9. When applying the criteria laid down in Article 128r, paragraph 3, item 6) of the Law, the National Bank of Serbia shall determine whether the bank's failure would pose a risk to the stability of the financial system of the Republic of Serbia, if the bank in question has not been identified as a systemically important bank.

If the bank is a systemically important bank, and/or if the National Bank of Serbia has established that the requirement specified in paragraph 1 hereof is met, it shall make sure that the minimum requirement for capital and eligible liabilities is determined in the amount which ensures that funds of the Republic of Serbia are used in the resolution pursuant to Article 128q, paragraph 7 of the Law, and/or pursuant to the decision of the National Bank of Serbia determining detailed terms of conversion of supplementary capital items of a bank and/or bank under resolution and detailed terms and manner of write-down and conversion of liabilities of a bank under resolution.

### **Determining the minimum requirement for capital and eligible liabilities**

10. By applying the criteria laid down in Article 128r, paragraph 3 of the Law and Sections 4–9 of this Decision, the National Bank of Serbia shall determine the minimum requirement for capital and eligible liabilities enabling the write-down and conversion of capital and eligible liabilities included in the calculation of the requirement in the amount of no less than the sum of the loss coverage and recapitalisation amounts.

The minimum requirement referred to in paragraph 1 hereof shall be calculated as the sum of capital and eligible liabilities included in the calculation of the requirement expressed as a percentage of capital and total liabilities of the bank.

In determining the minimum requirement referred to in Section 1 of this Decision, the National Bank of Serbia may determine that this requirement be partially fulfilled by the instruments which the bank agreed, in case of application of the bail-in tool, should be written-down or converted to the extent required prior to the write-down or conversion of other eligible liabilities and for which it also agreed that, in case of a bankruptcy procedure, liabilities under such instruments should be paid out after the settlement of other eligible liabilities – if it assesses that by the write-down or conversion of such instruments the resolution objectives would be achieved more efficiently and/or the resolution costs would be reduced.

Liabilities arising from derivatives shall be included in total liabilities referred to in paragraph 2 hereof by fully acknowledging the counterparty's contractual right to netting, which means that liabilities under derivatives shall be recognised in net amount.

Subordinated and other liabilities, which are already included in the calculation of Common Equity Tier 1 capital and Tier 2 capital as capital instruments, in accordance with the NBS decision governing the capital

adequacy of banks, shall be excluded from the qualifying eligible and total liabilities in the amount that has been included in the calculation of capital.

11. The National Bank of Serbia shall determine, by virtue of a decision, the minimum requirement for capital and eligible liabilities for each bank when drawing up the bank's resolution plan.

If a bank needs to undertake some activities in order to comply with the minimum requirement referred to in paragraph 1 hereof, the National Bank of Serbia shall determine, by virtue of the decision referred to in that paragraph, the timeframe in which the bank is required to comply with the requirement.

If, following the expiry of the deadline from paragraph 2 of this Section, the bank fails to comply with the minimum requirement for capital and eligible liabilities determined by the decision referred to in paragraph 1 of this Section, the National Bank of Serbia shall assess whether there are any substantive impediments to bank resolvability in accordance with Article 128f of the Law.

If it assesses in accordance with paragraph 3 of this Section that the impediments to bank resolvability are not substantive, the National Bank of Serbia shall determine, by virtue of the decision from paragraph 1 of this Section, the action plan, manner and timeframe in which the bank shall comply with the minimum requirement for capital and eligible liabilities.

### **Transitional and final provisions**

12. A bank shall comply with the minimum requirement for capital and eligible liabilities determined when drawing up the first resolution plan as follows:

- by 31 December 2016 – with 25% of the requirement from paragraph 1 hereof;
- by 31 December 2017 – with 50% of the requirement from paragraph 1 hereof;
- by 31 December 2018 – with 75% of the requirement from paragraph 1 hereof.

13. This Decision shall be published in the RS Official Gazette and shall enter into force on 1 April 2015.

Belgrade

Serbia  
Governor  
National Bank of Serbia

Dr Jorgovanka Tabaković