

Pursuant to Article 128n, paragraph 6 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

DECISION
ON DETAILED TERMS AND CONDITIONS FOR INVITING AND
SELECTING BIDS FOR ACQUISITION AND/OR SALE OF SHARES,
ASSETS AND LIABILITIES OF A BANK UNDER RESOLUTION

1. This Decision sets out detailed terms and conditions for inviting and selecting bids for acquisition and/or sale of shares of a bank under resolution or all or any assets or liabilities of the bank (hereinafter: sale of business).

Principles of the sale of business procedure

2. The National Bank of Serbia (NBS) shall take all reasonable measures to ensure that the transfer in respect of the sale of business be carried out under market conditions, in accordance with the following principles:

1) the procedure of the sale of business (hereinafter: sale procedure) shall be transparent, particularly regarding the value of assets and liabilities of the bank under resolution, which is determined independently as stipulated by Article 128i of the Law on Banks (hereinafter: Law), to the extent possible, in light of the need to preserve stability of the financial system;

2) no participant may be given unjustified advantage in the sale procedure, but this shall be without prejudice to the NBS's authority to offer shares of a bank under resolution or all or any assets or liabilities of the bank to specific persons;

3) the sale procedure shall be non-discriminatory and all participants shall be ensured a level playing field;

4) the sale procedure shall be conducted in such a way so as to prevent the conflict of interest;

5) the sale procedure shall be carried out efficiently, within the shortest possible timeframes, bearing in mind the urgency of the resolution procedure;

6) the sale procedure shall be carried out in such a way so as to ensure the highest selling price, to the extent possible.

Invitation to submit preliminary bids

3. Based on the assessment of situation in the financial market and given the need to preserve stability of the financial system, the NBS shall invite at least three potential bidders to submit preliminary bids.

The invitation referred to in paragraph 1 hereof shall contain:

- 1) business name, head office address and other relevant data on the bank under resolution;
- 2) data on shares and/or all or any of the bank's assets or liabilities that are offered for sale;
- 3) deadline for the submission of a preliminary bid;
- 4) confidentiality agreement;
- 5) basic data on contact persons;
- 6) other data, when needed.

The NBS may publish the invitation referred to in paragraph 1 hereof as a public invitation in the media, in at least one daily newspaper distributed in the entire territory of the Republic of Serbia and on the NBS website, as well as in the foreign press and other domestic and foreign media when needed.

The public invitation referred to in paragraph 3 hereof shall not contain data from paragraph 2, subparagraph 2), nor the agreement referred to in subparagraph 4) hereof, but instead it shall contain information on where such data may be taken over after the conclusion of the agreement and the designation of the possible price to be paid for taking over the documentation containing such data and the manner of paying the price.

Preliminary bid

4. A preliminary bid shall contain the statement of whether a potential bidder is interested in purchasing all and/or any shares, assets or liabilities of the bank under resolution that are offered for sale, as well as conditions for acquiring these shares and/or assets or liabilities.

A potential bidder shall submit a preliminary bid along with the signed confidentiality agreement.

If the purchase referred to in paragraph 1 hereof would lead to the acquisition of or increase in ownership in the bank referred to in that paragraph above the percentage specified in Article 94 of the Law, a potential bidder shall submit a preliminary bid along with the documentation prescribed

by the decision regulating the implementation of provisions of the Law relating to granting of NBS's prior consent for acquisition of ownership.

5. Based on discussions about elements of preliminary bids held with potential bidders who submitted such bids, the NBS shall submit to each potential bidder the invitation to submit a bid to purchase all and/or any shares, assets or liabilities of the bank under resolution.

The invitation referred to in paragraph 1 hereof shall contain the timeframe for the submission of bids, time and place of bid opening, description of the procedure, including the procedure of submission and receipt of bids, the documentation needed for the identification of participants in the procedure, the amount and timeframe for the payment of deposits in money or provision of other type of bid bond, bid ranking criteria, timeframe for the conclusion of the contract on the sale of shares and/or assets or liabilities of the bank under resolution (hereinafter: sale contract) and other data important for conducting the procedure.

The invitation referred to in paragraph 1 hereof may contain several options for the purchase of shares and/or assets or liabilities of the bank under resolution which are offered for sale, including special purchase conditions, if any.

Along with the invitation referred to in paragraph 1 hereof, the NBS shall submit a memorandum on the bank under resolution containing data on the bank and its operation, and other information important for bidders, the estimated value of assets and liabilities of the bank under resolution and/or its shares and assets or liabilities offered for sale, a copy of this decision, draft sale contract and other information and documentation, as needed.

Submission of bids

6. The timeframe for bid submission shall be defined by the invitation referred to in Section 5 of this Decision and may not be longer than ten days from the day of invitation.

7. A potential bidder who submitted a bid (hereinafter: bidder) shall pay deposit in money or provide other type of bid bond as specified in the invitation referred to in Section 5 of this Decision and shall submit appropriate evidence thereof along with the bid.

8. The bid shall be submitted in accordance with the invitation referred to in Section 5 hereof and shall contain in particular the price of

shares and assets or liabilities of the bank under resolution which are subject to purchase.

Bid opening and ranking

9. The NBS shall open bids and determine their timeliness, in accordance with the invitation referred to in Section 5 of this Decision.

Bid opening may be attended by bidders, their representatives or proxies.

The NBS shall notify the bidder in writing about an untimely bid by no later than the business day following the day of bid opening.

10. After bid opening, the NBS shall assess bids in accordance with the criteria from the invitation referred to in Section 5 of this Decision, within the timeframe stipulated by the invitation, but not longer than ten days after bid opening.

The NBS shall notify the bidder in writing about the bids that do not meet the conditions from the invitation referred to in Section 5 of this Decision, within the timeframe stipulated by paragraph 1 hereof.

The assessment of bids and notification about results of the sale procedure shall be conducted even in case of submission of only one bid.

If determined that no bid fulfils the conditions referred to in paragraph 2 hereof, the NBS shall determine that the sale has been unsuccessful, of which bidders shall be informed.

The deposit paid and bid bond shall be returned to the bidder who submitted an untimely bid or the bid which does not fulfil the conditions referred to in paragraph 2 hereof, within 15 days from the day of submission of a written notification about an untimely bid and/or a bid which does not fulfil the conditions referred to in paragraph 2 hereof. The bidder shall bear the costs of refund of paid deposit and/or bid bond.

11. After expiry of the timeframe referred to in Section 10, paragraph 1 of this Decision, the NBS shall compile the ranking list of bids, in accordance with the criteria specified in the invitation referred to in Section 5 of this Decision, inform the bidders of the list and invite the bidder of the best-ranked bid to start negotiations about conditions of the bid and contents of the sale contract, by designating the time and venue of negotiations.

Negotiations and conclusion of the sale contract

12. If the sale contract is not concluded within the timeframe stipulated by the invitation referred to in Section 5 of this Decision, the negotiations shall be considered unsuccessful, and the NBS shall send the invitation to negotiate to the bidder whose bid ranks next on the ranking list.

If no bid remains on the ranking list, the NBS shall make the decision determining that the sale was unsuccessful and shall act in the manner referred to in Section 10, paragraph 4 of this Decision.

The sale contract shall be concluded within the timeframe stipulated by the invitation referred to in Section 5 of this Decision. The NBS may extend the timeframe at its own initiative or at the proposal of the bidder with whom negotiations are conducted.

13. The bidder with whom a sale contract has been concluded shall be entitled to the refund of the deposit paid and/or bid bond, in accordance with the contract.

The bidder with whom negotiations were unsuccessful and the bidder not invited to negotiations shall be entitled to the refund of the deposit paid and/or bid bond under the conditions referred to in Section 10, paragraph 5 of this Decision.

The bidder who gave up on his bid shall not be entitled to the refund of the deposit paid and/or bid bond.

Right of complaint

14. Submitters of preliminary bids and bidders shall be entitled to complain about the breach of provisions of this Decision and conditions from the invitation referred to in Section 5 of this Decision.

The timeframe for the submission of the complaint referred to in paragraph 1 hereof shall be three days from the day of learning about the decision and/or action against which the complaint is submitted, by no later than the day of concluding the sale contract.

The complaint referred to in paragraph 1 hereof shall be submitted to the Governor, who shall handle the complaint within five days from the day of its submission.

The complaint referred to in paragraph 1 hereof shall not delay further steps in the sale procedure, apart from conclusion of the sale contract.

Direct sale

15. Notwithstanding Sections 3–14 of this Decision, the NBS may also conduct a direct sale of business, if it determines that the sale procedure stipulated in these Sections may jeopardise the achievement of resolution objectives, particularly if it assesses that the fact that the bank is failing or likely to fail poses a serious threat to stability of the financial system, whereas it shall assess:

- the risk of systemic crisis, which is estimated based on the number, size or importance of banks which may fulfil the conditions for early intervention measures or based on the granted extraordinary financial support to banks;

- the impact that the disclosure of some data and information about the bank under resolution (such as the bank's risk profile, its financial condition, estimated value of its assets and liabilities, critical functions etc) to a wider circle of potential buyers may have on a reduction or loss of confidence in the banking sector;

- the risk of interruption in the performance of the bank's critical functions or a significant increase in prices of their performance, which is estimated based on changed market conditions under which these functions are performed or their availability, and based on expectations of market participants in relation to the performance and/or use of these services;

- whether short-term funds or deposits have been withdrawn or may be withdrawn;

- whether the prices of banks' shares or assets have declined;

- whether the banks' financial position has changed due to increased credit insurance prices or lowered ranking (rating) of banks or other market participants;

- the possibility of ensuring stability of the financial system by selling shares of a bank under resolution or all or any assets or liabilities of the bank to certain potential buyers, particularly given their financial condition, market position, organisational structure and business activities, including a positive impact on the effectiveness of this resolution tool, its timely implementation and the possibility to maintain the bank's critical functions.

- the impact that the implementation of the sale procedure stipulated by Sections 3–14 of this Decision would have on the circle of potential buyers, given the prohibition of the conflict of interest, and bearing in mind whether the need for an urgent response justifies the incentives provided to certain potential buyers or the limitation of their risk;

– whether the implementation of the sale procedure aimed at achieving the highest selling price would impact the timely application of this resolution tool, the maintenance of the bank’s critical functions and the achievement of resolution objectives.

Final provisions

16. This Decision repeals Section 34 of the Decision on Implementing the Provisions of the Law on Banks Relating to Granting of a Preliminary Bank Founding Permit, Bank Operating License and Consents by the National Bank of Serbia, as Well as the Provisions Relating to the Establishment of Criteria for Defining a First-Class Bank (RS Official Gazette, Nos 43/2011, 43/2013 and 107/2014).

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

NBS Executive Board No 16
26 March 2015
Belgrade

Chairperson
Executive Board of the
National Bank of Serbia
Governor
National Bank of Serbia

Jorgovanka Tabaković, PhD