

Pursuant to Article 44 paragraph 2 point 3 of the Central Bank of Montenegro Law (OGM 40/10, 46/10, 06/13) and Article 117 paragraph 4 of the Payment System Law (OGM 62/13), the Central Bank of Montenegro Council, at its meeting held on 10 November 2014, passed the following

DECISION
on own funds of electronic money institutions

I. BASIC PROVISION

Article 1

This decision shall prescribe the conditions and the method for calculating own funds that an electronic money institution shall maintain for the purpose of ensuring safe and sound operations and/or meeting obligations to its creditors.

II. CALCULATION OF OWN FUNDS

Own funds

Article 2

Own funds of an electronic money institution shall be the sum of core and supplementary capital reduced by deductible items referred to in Article 9 herein.

Core capital

Article 3

Core capital of an electronic money institution shall be the sum of elements of electronic money institution's core capital referred to in paragraph 2 below reduced by the sum of deductible items referred to in paragraph 3 below.

Elements of an electronic money institution's core capital shall be:

- 1) Paid-in share capital at nominal value excluding cumulative preferred shares (for an electronic money institution which is a joint stock company), or paid-in contribution (for an electronic money institution which is a limited liability company);
- 2) Paid-up issue premiums, excluding issue premiums based on cumulative preferred shares (for a joint stock company), or the amount paid above par value during the payment of the contribution (for a limited liability company);

- 3) Reserves formed against profit after taxes (legal, statutory and other reserves);
- 4) Retained earnings from prior years for which the general meeting (for a joint stock company) or competent authority of an electronic money institutions which is a limited liability company has passed a decision to be included in core capital, reduced by income tax and other expected costs;
- 5) Current year income, if the following conditions are met:
 - general meeting or board of directors with the authorisation of the general meeting (for a joint stock company) or competent authority of an electronic money institution which is a limited liability company passed a decision to allocate income realized in the current year in the whole or in part into reserves, capital increase, to cover prior year losses and/or in retained earnings, expressed as percentage,
 - income reduced by corresponding income tax and other expected costs,
 - external auditor has verified income,
 - an electronic money institution has obtained approval from the Central Bank for the inclusion of income into the core capital of the bank.

When calculating core capital of an electronic money institution, deductible items shall be:

- 1) Prior year loss;
- 2) Current year loss;
- 3) Intangible assets in the form of goodwill, licenses, patents, trademarks and concessions;
- 4) Nominal amount of acquired own funds, excluding cumulative preferred shares (for a joint stock company) or acquired own contributions (for a limited liability company);
- 5) Unrealised loss based on value adjustment of available for sale financial assets at fair value.

Conditions for the inclusion in core capital

Article 4

An electronic money institution may include certain elements of core capital in the calculation of core capital if the following conditions are met:

- 1) Those elements unconditionally, irrevocably and fully are at the disposal to cover risks or losses during the entire period of an electronic money institution's operations;
- 2) In case of initiating bankruptcy proceedings or liquidation proceedings of an electronic money institution, those elements are fully and without limitations at the disposal for settlement of losses of the electronic money institution after all obligations to all other creditors of the electronic money institution have been met;
- 3) Those elements are reduced by the expected amount of tax liability.

Supplementary capital

Article 5

Supplementary capital of an electronic money institution shall be the sum of elements of supplementary capital referred to in paragraph 2 below, reduced by the sum of deductible items referred to paragraph 3 below.

Supplementary elements of own funds to be included in supplementary capital of an electronic money institution shall be:

- 1) Nominal amount of paid-in preferred cumulative shares (for joint stock companies);
- 2) Paid-up issue premiums based on cumulative preferred shares (for joint stock companies) or the amount paid above the par value during the payment of contribution (for limited liability companies);
- 3) Subordinated debt that meets the conditions set forth Article 6 herein;
- 4) Hybrid instruments that meet the conditions set forth in Article 7 herein;
- 5) Revaluation reserves for properties owned by the electronic money institution.

When calculating supplementary capital, deductible items shall be:

- 1) Acquired own preferred cumulative shares (for joint stock companies),
- 2) Receivables and contingent liabilities secured by hybrid instruments or subordinated debt of an electronic money institution up to the amount in which such instruments are included in supplementary capital.

Subordinated debt

Article 6

Subordinated debt may be included in the calculation of supplementary capital if:

- 1) the debt is paid in full;
- 2) the debt is unsecured and/or the electronic money institution does not guarantee payment of such debt by its own pledge, mortgage or in any other way;
- 3) In the event of bankruptcy or liquidation proceedings of the electronic money institution, debt is subordinated to other obligations and it is paid only after the settlement of obligations to other creditors;
- 4) the debt can be used only for the payment of claims of creditors in bankruptcy and/or liquidation proceedings of the electronic money institution;
- 5) the payment of debt to creditors or redemption by the electronic money institution before maturity may be executed only:
 - In the case of the conversion of subordinated debt into shares, excluding cumulative preferred shares (for joint stock companies) and/or in contributions (for limited liability companies),

- In other cases, with the approval of the Central Bank, if the payment of debt does not deteriorate indicators of capital adequacy of the electronic money institution;
- 6) the maturity of debt is predetermined and longer than five years from the date of payment.

If the repayment of subordinated debt is agreed in instalments, the debt may be treated as an element of supplementary capital only if the maturity of the first instalment is longer than five years.

When calculating the supplementary capital, electronic money institution shall reduce total amount of subordinated debt by 20% at the beginning of each of the last five years preceding the agreed maturity of debt.

Hybrid instruments

Article 7

Hybrid instrument may be included in the calculation of the supplementary capital if

- 1) the instrument is issued by an electronic money institution with the intention to include it in the calculation of supplementary capital;
- 2) the obligation under such instrument is fully paid;
- 3) the instrument is unsecured and/or the electronic money institution does not guarantee the payment of such instrument by its own pledge, mortgage or in any other way;
- 4) the instrument is fully, unconditionally and without any delay available for loss coverage;
- 5) In the event of bankruptcy or liquidation proceedings of the electronic money institution, debt is subordinated to other obligations and it is paid only after the settlement of obligations to other creditors;
- 6) the maturity of debt is predetermined and longer than five years from the date of payment;
- 7) payment to creditors or the purchase by electronic money institution before maturity is not possible, unless in case of the conversion of this instrument into shares of the electronic money institutions (for joint stock companies) and/or into contributions (for limited liability companies), excluding cumulative preferred shares;
- 8) the level of own funds drops below legally prescribed level, the electronic money institution may not, until it reaches the prescribed level of own funds, pay interest, fees and other yields based on such instrument; and
- 9) it does not increase own funds up to the prescribed level within 90 days from the day when it has been determined that the amount of own funds dropped below the amount representing 75% of the prescribed level, the electronic money institution shall convert such instrument into shares (for joint stock companies) and/or into contributions (for limited liability

If the obligation of the electronic money institution for hybrid instrument is agreed that the obligations under such instrument are paid in instalments, the instrument may be treated as an element of supplementary capital only if the first instalment matures in period longer than five years.

Hybrid instrument shall not be included in the supplementary capital of an electronic money institution in the last year before maturity.

Ratios when calculating own funds

Article 8

Electronic money institution shall adhere to the following ratios when calculating own funds:

- 1) total amount of supplementary capital shall not exceed the amount of core capital of an electronic money institution;
- 2) total sum of subordinated debt and cumulative preferred shares shall not exceed 50% of core capital.

Deductible items from own funds

Article 9

Deductible items from own funds of an electronic money institution shall include:

- 1) direct or indirect investments in other electronic money institution, bank or other credit or financial institution in the amount exceeding 10% of capital of these institutions;
- 2) investment of an electronic money institution in subordinated debt and hybrid instruments of another electronic money institution, bank or other credit or financial institution in which the electronic money institution has direct or indirect investments exceeding 10% of the capital of such institution;
- 3) total amount of direct or indirect investments in other electronic money institutions, banks or other credit or financial institutions in the amount up to 10% of their capital and investments in subordinated debt and hybrid instruments not included under item 2) above, if exceeding 10% of own funds of the electronic money institution before the deduction performed in accordance with this Article herein;
- 4) direct or indirect investments of an electronic money institution into shares of the insurance company, reinsurance company or insurance holding company exceeding 10% of the capital of such company and/or holding;

Deductible items under paragraph 1 above shall be deducted from core and supplementary capital by subtracting 50% of total amount of deductible items from core capital, and 50% from supplementary capital of the electronic money institution.

By way of derogation from paragraph 2 above, if 50% of total amount of deductible items is higher than the amount of supplementary capital, the difference above the amount of supplementary capital shall be subtracted from core capital.

Electronic money institution shall not treat investments under paragraph 1 points 1) through 3) above as a deductible item when calculating supplementary capital if such investments are temporary and the electronic money institution holds them for the purpose of providing financial assistance for reorganisation or recovery of financial situation of a person to which these investments refer.

In the event of the treatment of an investment in the manner referred to in paragraph 4 above, the electronic money institution shall inform the Central Bank without any delay thereof and submit documents proving the fulfilment of the conditions for the exclusion of such investment from the calculation of supplementary capital.

Electronic money institution may not include in own funds the following:

- 1) profit and loss based on obligations carried at fair value arising from the changes in credit rating of the electronic money institution;
- 2) cash flow hedging reserve initially measured at amortisation cost and cash flow hedging that refers to unplanned transactions;
- 3) unrealised profit from investment property and available for sale financial instruments.

Conditions for including subordinated debt and hybrid instrument in supplementary capital

Article 10

Electronic money institution may include subordinated debt and hybrid instrument in supplementary capital only if it submits to the Central Bank evidence that the conditions referred to in Articles 6 and 7 herein have been met for the inclusion of subordinated debt and/or hybrid instrument in supplementary capital.

III. MINIMUM REQUIREMENTS FOR OWN FUNDS

Minimum amount of own funds

Article 11

Own funds of an electronic money institution for the activity of issuing electronic money, which are calculated in accordance with Articles 2 through 10 herein, shall amount to at least 2 percent of average electronic money in circulation.

Average electronic money in circulation, within the meaning of paragraph 1 above, shall be average total amount of financial liabilities based on issued electronic money at the end of each calendar day during the previous six calendar months, calculated on the first calendar day of each calendar month and applied for the respective calendar month.

In addition to own funds referred to in paragraph 1 above, an electronic money institution providing payment services not connected with the issuing of electronic money shall, in addition to the minimum amount of own funds referred to in paragraph 1 above, have additional amount of own funds which is at least equal to the amount of own funds that payment institutions have in accordance with the Payment System Law (OGM 62/13) – (hereinafter: the Payment System Law) and the decision regulating the calculation of payment institution's own funds.

Own funds of the electronic money institution shall not in any moment fall below the minimum initial capital of electronic money institutions set forth in Article 116 paragraph 1 of the Payment System Law or the sum of own funds determined in accordance with paragraphs 2 and 3 above, whichever is higher.

Exemptions

Article 12

The Central Bank may, based on the risk management assessment, database on risk management and mechanisms for internal controls system functioning, request the electronic money institution to increase own funds up to 20% compared to the amount calculated in accordance with this decision, and give approval to the electronic money institution to reduce the amount of own funds up to 20% relative to the amount calculated in accordance with this decision, provided that the amount of own funds of the electronic money institution must not at any time drop below the minimum amount of initial capital of the electronic money institution referred to in Article 116 paragraph 1 of the Payment System Law.

IV. FINAL PROVISION

Entering into force

Article 13

This decision shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro and it shall apply from 9 January 2015.

THE CENTRAL BANK OF MONTENEGRO COUNCIL

CHAIRMAN

G O V E R N O R,

Milojica Dakić, m.p.

Decision number: 0101-4014/63-9
Podgorica, 10 November 2014