

Pursuant to Article 44 paragraph 2 point 3 of the Central Bank of Montenegro Law (OGM 40/10, 46/10, 06/13) and Article 78 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 payment institutions**

**I. BASIC PROVISION**

**Article 1**

This decision shall prescribe the manner of calculating own funds of payment institutions and the method for calculating minimum amount of own funds that a payment 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 a payment 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 a payment institution shall be the sum of elements of payment institution's core capital referred to in paragraph 2 below reduced by the sum of deductible items under paragraph 3 below.

Elements of a payment institution's core capital shall be:

- 1) Paid-in share capital at nominal value excluding cumulative preferred shares (for a payment institutions which is a joint stock company), or paid-in contributions (for a payment 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 a payment institution 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 a payment 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,
    - a payment 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 a payment 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**

A payment 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 a payment institution's operations;
- 2) In case of initiating bankruptcy proceedings or liquidation proceedings of a payment institution, those elements are fully and without limitations at the disposal for settlement of losses of the payment institution after all obligations to all other creditors of a payment institution have been met;
- 3) Those elements are reduced by the expected amount of tax liability.

## **Supplementary capital**

### **Article 5**

Supplementary capital of a payment 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 a payment 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 payment 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 a payment 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 payment institution does not guarantee the 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 payment 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 payment institution;
- 5) the payment of debt to creditors or redemption by the payment 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 into contributions (for limited liability companies),

- In other cases, with the approval of the Central Bank, if the payment of debt does not deteriorate capital adequacy indicators of the payment 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, payment 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 a payment 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 payment 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 payment 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 a payment institution before the maturity is not possible, unless in case of the conversion of this instrument into shares of the payment 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 payment 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 payment institution shall convert such instrument into shares (for joint

If the obligation of the payment 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 a payment institution in the last year before maturity.

### **Ratios when calculating own funds**

#### **Article 8**

Payment 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 the payment 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 a payment institution shall include:

- 1) direct or indirect investments in other payment institution, bank or other credit or financial institution in the amount exceeding 10% of capital of these institutions;
- 2) investment of the payment institution in subordinated debt and hybrid instruments of another payment institution, bank or other credit or financial institution in which the payment institution has direct or indirect investments exceeding 10% of the capital of such institution;
- 3) total amount of direct or indirect investments in other payment 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 payment institution before the deduction performed in accordance with this Article herein;
- 4) direct or indirect investments of the payment 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 payment 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.

Payment 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 payment 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 payment 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.

Payment 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 payment 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**

Payment 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 a payment institution calculated in accordance with Articles 2 through 10 herein shall not in any time fall below the amount of minimum initial capital of a payment institution set forth in Article 70 of the Payment System Law (OGM 62/13) (hereinafter: the Payment System Law) or the amount calculated applying the payment transaction range method referred to in Article 12 herein, whichever is higher.

#### **Payment transaction range method**

##### **Article 12**

The amount representing the result of factor “k” referred in paragraph 3 below and sum of the following elements shall be calculated applying the payment transaction range method:

- 1) 4% of the part of the volume of payment transactions up to the amount of 5.000.000.00 euros;
- 2) 2,5% of the part of the volume of payment transactions above the amount of 5.000.000.00 euros up to the amount of 10.000.000.00 euros;
- 3) 1% of the part of the volume of payment transactions above the amount of 10.000.000.00 euros up to the amount of 100.000.000.00 euros;
- 4) 0,5% of the part of the volume of payment transactions above the amount of 100.000.000.00 euros up to the amount of 250.000.000.00 euros, plus
- 5) 0.25% of the part of the volume of payment transactions above the amount of 250.000.000.00 euros.

The volume of payment transactions under paragraph 1 above shall represent one twelfth of total value of payment transactions which the payment institution executed in the previous year.

Factor “k” referred to in paragraph 1 above shall amount to:

- 1) 0.5 if the payment institution provides only payment services referred to in Article 2 point 6) of the Payment System Law;
- 2) 0.8 if the payment institution provides only payment services referred to in Article 2 point 7) of the Payment System Law, or
- 3) 1.0 if the payment institution provides any of the payment services referred to in Article 2 points 1) through 5) of the Payment System Law.

## **Exemptions**

### **Article 13**

The Central Bank may, based on the risk management assessment, database on risk management and mechanisms for internal controls system functioning, request the payment institution to increase own funds up to 20% compared to the amount calculated in accordance with this decision, and give approval to the payment 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 payment institution must not drop at any time below the minimum amount of initial capital of the payment institution referred to in Article 70 of the Payment System Law.

## **IV. FINAL PROVISION**

### **Entering into force**

#### **Article 14**

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  
GOVERNOR,**

Decision number: 0101-4014/63-8  
Podgorica, 10 November 2014

**Milojica Dakić, m.p.**