

Pursuant to Article 44 paragraph (2) item 3) of the Central Bank of Montenegro Law (OGM, 40/10, 6/13, 70/17), and Article 138 paragraph (3) of the Law on Resolution of Credit Institutions (OGM, 72/19), the Council of the Central Bank of Montenegro, at its meeting held on 14 December 2020, passed the following

**DECISION ON  
THE METHODOLOGY FOR VALUATION OF ASSETS OF THE CREDIT  
INSTITUTION UNDER RESOLUTION PROCEEDINGS AFTER CARRYING OUT THE  
TRANSFER OF A PART OF THE RIGHTS, ASSETS AND LIABILITIES OR AFTER  
APPLYING THE BAIL-IN TOOL**

**Subject matter**

**Article 1**

This Decision shall govern the methodology for valuation of assets of the credit institution under resolution proceedings after carrying out the transfer of a part of the rights, assets and liabilities or after applying the bail-in tool.

**Valuation of assets**

**Article 2**

(1) An independent valuer shall assess the value of assets of the credit institution under resolution proceedings after the transfer of part of the rights, assets and liabilities or after applying the bail-in tool in order to determine the difference between the effects of resolution of the credit institution on the credit institution's shareholders and creditors and the effects of bankruptcy proceedings against that credit institution if it had been initiated at the time the decision to initiate the resolution proceedings had been made.

(2) For the purpose of determining the treatment of shareholders and creditors in the event that bankruptcy proceedings have been initiated against a credit institution, the valuation shall only be based on information about facts and circumstances which existed and could reasonably have been known at the resolution decision date, which, had they been known to the independent valuer, would have affected the valuation of the credit institution's assets and liabilities at that date.

(3) Within the meaning of this Decision, the resolution decision shall be the date when the Central Bank of Montenegro (hereinafter: the Central Bank) issued the decision on initiating the resolution proceedings of the credit institution.

(4) For the purpose of determining the actual treatment of shareholders and creditors in the resolution proceedings, the independent valuer shall use available information regarding the facts and circumstances that existed on the date or dates when shareholders and creditors receive compensation.

(5) The reference valuation date shall be the date of the decision on initiating the resolution proceedings.

(6) If the independent valuer deems the impact of any discounting of the proceeds to be negligible, the undiscounted income at the date the resolution action has been implemented may be directly compared with the discounted amount of hypothetical proceeds that shareholders and creditors would have received had the credit institution opened bankruptcy proceedings at the resolution decision date.

### **Inventory of assets and claims**

#### **Article 3**

(1) The independent valuer shall establish an inventory of all identifiable and contingent assets owned by the credit institution, including assets for which the existence of associated cash flows is demonstrated or can reasonably be expected.

(2) A credit institution shall provide the independent valuer with a list of all claims and contingent claims against the credit institution, which shall classify all claims and contingent claims according to their priority orders in bankruptcy proceedings.

(3) The independent valuer shall be able to enter into arrangements for specialist advice or expertise as regards the consistency of the ranking of claims with the applicable law governing bankruptcy of credit institution.

(4) Encumbered assets and claims secured by those assets shall be identified separately by the independent valuer.

### **Determining the difference in treatment of shareholders and creditors**

#### **Article 4**

For the purposes of determining whether a difference in treatment as referred to in Article 2 paragraph (1) of this Decision exists the independent valuer shall assess:

- 1) the treatment that shareholders and creditors in respect of which resolution actions have been effected, or the relevant deposit guarantee scheme, would have received had the credit institution entered bankruptcy proceedings at the resolution decision date, disregarding any provision of extraordinary public financial support;
- 2) the value of the restructured claims following the application of the bail-in tool or other resolution powers and tools, or of other proceeds received by shareholders and creditors as at the actual treatment date or dates, discounted back to the resolution decision date if deemed necessary to enable a fair comparison with the treatment referred to in item 1) of this Article;
- 3) whether the outcome of the treatment referred to in item 1) of this Article exceeds the outcome of the value referred to in item 2) of this Article for each creditor in

accordance with the priority orders in bankruptcy proceedings as identified according to Article 3 of this Decision.

## **Determination of the treatment of shareholders and creditors under bankruptcy proceeding**

### **Article 5**

(1) The methodology for conducting the valuation pursuant to Article 4 item 1) of this Decision shall be limited to determining the discounted amount of expected cash flows under bankruptcy proceedings.

(2) Expected cash flows shall be discounted at the rate or rates reflecting, as appropriate, the timing associated with expected cash flows, prevailing circumstances as of the resolution decision date, risk-free interest rates, risk premia for similar financial instruments issued by similar credit institutions, market conditions or discount rates applied by potential acquirers and other relevant characteristics of the element or elements being valued (hereinafter: the relevant discount rate).

(3) The relevant discount rate shall not apply where particular rates, if relevant for the purposes of the valuation, are specified in the law or other regulation.

(4) The independent valuer shall take the following into account in the determination of the discounted amount of expected cash flows under bankruptcy proceedings:

- 1) applicable regulation and usual bankruptcy practice, which may influence factors such as the expected disposal period or recovery rates;
- 2) reasonably foreseeable administration, transaction, maintenance, disposal and other costs which would have been incurred by a bankruptcy administrator, as well as financing costs.
- 3) the information on recent bankruptcy cases of similar entities, where available and relevant.

(5) For assets traded in an active market, the independent valuer shall use the observed market price, except where specific circumstances hamper the marketability of the assets, such as concentration, saturation and depth of the market.

(6) For assets not traded in an active market, the independent valuer shall consider a number of factors when determining the amount and timing of expected cash flows, including:

- 1) prices observed in active markets where similar assets are traded;
- 2) prices observed in insolvency proceedings or otherwise distressed transactions involving assets of a similar nature and condition;
- 3) prices observed in transactions involving the sale of shares, assets or liabilities of a credit institution or the transfer to a bridge credit institution or an asset management vehicle in a resolution context relating to similar credit institutions;

- 4) the likelihood of an asset generating net cash inflows under bankruptcy proceedings;
- 5) expected market conditions within a given disposal period, including market depth and the ability of the market to exchange the relevant volume of assets within that period; and
- 6) the length of such disposal period shall reflect the implications of the applicable bankruptcy law and proceedings, including the expected length of the liquidation process, or the characteristics of the relevant assets.

(7) The independent valuer shall consider whether the financial condition of the credit institution would have affected the expected cash flows, including through restrictions on the administrator's ability to negotiate terms with potential purchasers.

(8) The hypothetical proceeds resulting from the valuation shall be allocated to shareholders and creditors in accordance with their priority order in accordance with the law governing bankruptcy of credit institutions.

(9) For the purpose of determining any unsecured amount of derivatives claims in bankruptcy proceedings, the independent valuer shall apply methodologies set out in the regulation of the Central Bank determining the amount of derivative liabilities of the credit institution under resolution proceedings, to the extent consistent with the law governing bankruptcy proceedings of credit institutions.

### **Determination of the actual treatment of shareholders and creditors in resolution proceedings**

#### **Article 6**

(1) The independent valuer shall identify all claims outstanding after the write-down or conversion of capital instruments and the application of any resolution actions, and shall assign those claims to the legal and natural persons who were the capital institution's shareholders and creditors at the resolution decision date.

(2) By way of derogation from paragraph (1) of this Article, where the legal and natural persons who were the credit institution's shareholders and creditors at the resolution decision date receive cash compensation as a result of the resolution, the independent valuer shall determine their actual treatment in accordance with paragraphs (3), (4) and (5) of this Article.

(3) Where the legal and natural persons who were the credit institution's shareholders and creditors at the resolution decision date receive equity compensation as a result of the resolution, the independent valuer shall determine their actual treatment by providing an estimate of the overall value of shares transferred or issued as consideration to the holders of converted capital instruments or to the bailed-in creditors, where the estimate may be based on the assessed market price resulting from generally accepted valuation methodologies.

(4) Where the legal and natural persons who were the credit institution's shareholders and creditors at the resolution decision date receive debt compensation as a result of resolution, the independent valuer shall determine the actual treatment by taking into account factors such as the changes in contractual cash flows that result from the write-down or conversion, or the application of other resolution actions, as well as the relevant discount rate.

(5) For any outstanding claim, the independent valuer may take into account, where available and together with the factors described in paragraphs (3) and (4) of this Article, prices observed in active markets for the same or similar instruments issued by that credit institution under resolution.

## **Valuation report**

### **Article 7**

The independent valuer shall prepare a valuation report to the Central Bank which shall include at least the following elements:

- 1) a summary of the valuation including a presentation of valuation ranges and sources of valuation uncertainty;
- 2) an explanation of the key methodologies and assumptions adopted, and how sensitive the valuation is to these choices;
- 3) an explanation, where feasible, why the valuation differs from other relevant valuations, including the resolution valuations conducted before resolution.

## **Entry into force**

### **Article 8**

This Decision shall enter into force on the eight day following that of its publication in the Official Gazette of Montenegro, and shall apply from the date of application of the Law on Resolution of Credit Institutions (OGM 72/19).

## **THE COUNCIL OF THE CENTRAL BANK OF MONTENEGRO**

No.0101-7418-2/2020  
Podgorica, 14 December 2020

**CHAIRMAN  
G U V E R N E R,**

**Radoje Žugić, m.p.**