

Pursuant to Article 44 paragraph (2) item 3) of the Central Bank of Montenegro Law (OGM 40/10, 06/13, 70/17) and Article 108 paragraph (6) of the Law on Resolution of Credit Institutions (OGM 72/19), the Council of the Central Bank of Montenegro, at its meeting held on 8 December 2020, passed the following

**DECISION**  
**ON MORE DETAILED REGULATION OF CONTRACTUAL RECOGNITION OF**  
**WRITE-DOWN AND CONVERSION POWERS IN RELATION TO CREDIT**  
**INSTITUTION'S LIABILITIES GOVERNED BY A THIRD COUNTRY LAW**

**Subject matter**

**Article 1**

This Decision shall govern in more detail the contractual recognition of powers of the Central Bank of Montenegro (hereinafter: the Central Bank) for write-down and conversion of liabilities governed by the law of a third country, when applying bail-in instrument in relation to a credit institution or a legal person referred to in Article 3 items 2), 3), and 4) of the Law on Credit Institutions (OGM 72/19) – (hereinafter: the Law).

**Definitions**

**Article 2**

The terms used in this Decision shall have the following meaning:

- 1) **third country** means a non-European Union Member State and the European Union Member State until Montenegro's accession to the European Union;
- 2) **material amendment** means, in relation to a relevant agreement entered into before the date of application of this Decision, an amendment, including an automatic amendment, made after that date and affecting the substantive rights and obligations of a party to a relevant agreement, whereby the amendments relating to a change to the contact details of a signatory or the addressee for the service of documents, typographical changes to correct drafting errors or automatic adjustments of interest rates shall not be deemed material amendments;
- 3) **relevant agreement** means any agreement, including the terms of a capital instrument, creating a liability to which Article 108 paragraphs (1) and (2) of the Law applies.

**Contents of the contractual term relating to recognition of write-down and conversion powers**

**Article 3**

Contractual term in a relevant agreement on recognition of write-down powers of the Central Bank shall include the following:

- 1) the acknowledgement and acceptance by the counterparty that, in the case of resolution of a credit institution or a legal entity referred to in Article 3 paragraphs (2), (3), and (4) of the Law, the liability may be subject to the exercise of write-down and conversion powers by the Central Bank;
- 2) a description of the write-down and conversion powers of the Central Bank in accordance with the Law, in particular the powers set out in Article 113 paragraph (1) items 6) to 9) of the Law;
- 3) the acknowledgement and acceptance by the counterparty of a credit institution or a legal entity referred to in Article 3 paragraphs (2), (3), and (4) of the Law:
  - that it is bound by the effect of an application of the powers referred to in indent 2 of this item, including:
    - (a) any reduction in the principal amount or outstanding amount due, including any accrued but unpaid interest, in respect of the liability of a credit institution or legal entity referred to in Article 3 paragraphs (2), (3), and (4) of the Law under the relevant agreement;
    - (b) the conversion of that liability into ordinary shares or other instruments of ownership;
  - that the terms of the relevant agreement may be varied as necessary to give effect to the exercise by the Central Bank of its write-down and conversion powers and such variations will be binding on the counterparty of a credit institution or legal entity referred to in Article 3 paragraphs (2), (3), and (4) of the Law;
  - that ordinary shares or other instruments of ownership may be issued to or conferred on the counterparty as a result of the exercise of the write-down and conversion powers;
- 4) the acknowledgement and acceptance by the counterparty of a credit institution or a legal entity referred to in Article 3 paragraphs (2), (3), and (4) of the Law, that the contractual term is exhaustive on the matters described therein to the exclusion of any other agreements, arrangements or understandings between the counterparties relating to the subject matter of the relevant agreement.

### **Application of exclusion in relation to contractual recognition**

#### **Article 4**

(1) For the purposes of application of Article 108 paragraph (2) item 1) of the Law, a secured liability shall not be considered as an excluded liability where, at the time at which it is created, it is:

- 1) not fully secured;
- 2) fully secured but governed by contractual terms that do not oblige the debtor to maintain the liability fully collateralised on a continuous basis in compliance with regulatory requirements applicable in Montenegro, or regulatory requirements of a third country law that are equivalent to regulatory requirements applicable in Montenegro.

(2) For the purposes of application of Article 108 paragraph (2) item 4) of the Law, liabilities issued or entered into after the date of application of this Decision shall comprise:

- 1) liabilities created after that date, regardless of whether they are created under relevant agreements entered into before that date, including under master or

framework agreements between the contracting parties governing multiple liabilities;

- 2) liabilities created before or after that date under relevant agreements entered into before that date and which are subject to a material amendment;
- 3) liabilities under debt instruments issued after that date;
- 4) liabilities under debt instruments issued before or after that date under relevant agreements entered into before that date and which are subject to a material amendment.

(3) For the purposes of application of Article 108 paragraph (3) of the Law, the Central Bank shall determine that the requirement to include a contractual term in a relevant agreement shall not apply, where it is satisfied that the law of the third country concerned or a binding international agreement provides for an administrative or judicial procedure which:

- 1) at the request of the Central Bank, or at the initiative of the third country administrative or judicial authority whose law governs the liability or instrument, enables such duly empowered third country administrative or judicial authority, within a period which the Central Bank determines will not compromise the effective application of the write-down and conversion powers by the Central Bank, to do either of the following:
  - recognise and give effect to the exercise of the write-down and conversion powers by the Central Bank;
  - support, through the application of relevant powers, the exercise of the write-down and conversion powers by the Central Bank;
- 2) provides that the grounds on which a third country administrative or judicial authority may refuse to recognise or support the exercise of the write-down or conversion powers pursuant to item 1) of this paragraph are clearly stated and are limited to one or more of the following exceptional cases:
  - the recognition or support of the exercise of the write-down and conversion powers by the Central Bank would have adverse effects on financial stability in the third country concerned;
  - the recognition or support of the exercise of the write-down and conversion powers would result in third country creditors, in particular depositors located and payable in that third country, being treated less favourably than creditors, and in particular depositors located in Montenegro, with similar rights under regulations applicable in Montenegro;
  - recognition or support would have material financial implications for the third country concerned;
  - recognition or support of the exercise of write-down and conversion powers by the Central Bank would have effects contrary to the public interest of the third country concerned.

(4) For the purposes of application of Article 108 paragraph (3) of the Law, the Central Bank shall assess whether the grounds referred to in paragraph (3) item 2) of this Article would prevent the recognition or support of the exercise of the write-down and conversion powers in all circumstances where such powers are applied.

## **Entry into force**

### **Article 5**

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 the date of application of the Law on Credit Institutions (OGM 72/19).

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

Decision number 0101-7285-3/2020  
Podgorica, 8 December 2020

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

Radoje Žugić m.p.