

Pursuant to Article 102, paragraph 6 and Article 117a, paragraph 11 of the Law on Banks (RS Official Gazette, Nos 107/2005 and 91/2010) and Article 15, paragraph 1 and Article 64, paragraph 2 of the Law on the National Bank of Serbia (RS Official Gazette, Nos 72/2003, 55/2004 and 44/2010), the Executive Board of the National Bank of Serbia hereby issues

## **DECISION ON DETAILED CONDITIONS AND MANNER OF CONDUCTING BANK SUPERVISION**

1. This Decision lays down detailed conditions and manner of conducting supervision of safety and soundness and legal compliance of banks' operation (hereinafter: bank supervision) conducted by the National Bank of Serbia (NBS), as well as measures taken against banks in the supervision procedure, in line with the Law on Banks (hereinafter: the Law).

In conducting supervision, the NBS shall examine bank's safety and soundness, particularly as regards:

- risks that a bank is exposed to or may be exposed to in its operation, and the coverage and reliability of the risk management system;
- bank's financial position and capital adequacy relative to risks that a bank is exposed to or may be exposed to in its operation as well as relative to the risk management system;
- adequacy of the management and organisational structure of a bank, as well as adequacy and reliability of the bank's internal control system, relative to risks that a bank is exposed to or may be exposed to in its operation;
- adequacy and reliability of internal assessment of bank's capital adequacy, consistency of its implementation and the results of such assessment;
- accuracy and adequacy of data and information that a bank is required to publish;
- compliance of bank operations with the Law, NBS's regulations adopted based on the Law and prudential banking practices;
- compliance of bank operations with the law regulating accounting and audit, and NBS's regulations adopted based on that law.

2. The NBS shall conduct off-site and on-site supervision.

The NBS shall conduct off-site supervision by inspecting reports and other documents submitted by a bank to the NBS pursuant to the Law and NBS's regulations, as well as by inspecting other data on bank's operation available to the NBS. The NBS shall conduct on-site supervision by examining bank's business books and other documents.

3. If it establishes that a bank committed irregularities within the meaning of Section 27 hereof, the NBS shall institute off-site supervision in the bank by compiling a report on the findings of such supervision.

Provisions relating to on-site supervision shall apply to further off-site supervision of the bank.

4. On-site bank supervision shall be conducted by NBS employees designated for such purpose by the resolution of the NBS Governor (hereinafter: the Governor) or the person authorised by him.

The bank and/or other persons where on-site supervision is conducted, as well as the subject of supervision, shall be stated in the resolution specified in paragraph 1 hereof.

On-site supervision of a bank shall be initiated by the adoption of the resolution referred to in paragraph 2 hereof.

The Governor, or the person authorised by him, may in the course of on-site supervision amend the resolution referred to in paragraph 3 hereof.

Authorised persons of a foreign regulator that supervises the operation of members of the banking group to which the bank belongs, may also take part in on-site supervision, pursuant to the agreement on cooperation concluded between the NBS and the foreign regulator.

The NBS employees referred to in paragraph 1 hereof and authorised persons referred to in paragraph 5 hereof (hereinafter: authorised persons) shall compile a report on the outcome of on-site supervision.

5. The NBS shall deliver the reports referred to in Section 3, paragraph 1 and Section 4, paragraph 6 hereof to the bank that was subject to

supervision to which the bank may submit its objections within the timeframe determined by the Law.

The bank shall submit to the NBS evidence that members of its executive board and board of directors are familiar with the report referred to in paragraph 1 hereof. It shall also submit compiled objections of the two boards to the reports, signed by their presidents.

The NBS shall verify the objections referred to in paragraph 2 hereof and shall compile a note of the findings and deliver it to the bank.

6. If the NBS issues a resolution on a temporary measure against the bank under Article 109 of the Law, such resolution shall apply until the measures referred to in Article 112, paragraph 1 of the Law are set, or until the conclusion is rendered to terminate bank supervision.

7. The written warning referred to in Article 114 of the Law (hereinafter: written warning) shall be issued to the bank in whose operation irregularities were established that did not significantly or directly impact its financial position, but may have such impact if not eliminated.

The written warning shall state the timeframe for the elimination of irregularities and the timeframe within which the bank is required to submit to the NBS a report on eliminated irregularities, with appropriate evidence enclosed.

The NBS shall inspect whether the bank eliminated the established irregularities after expiry of the timeframe referred to in paragraph 2 hereof or before the expiry of the timeframe if it receives the bank's notification on eliminated irregularities.

The NBS shall terminate supervision in the bank to which it sent a written warning once it ascertains that the irregularities established were eliminated or largely eliminated within the timeframe stated in the written warning – otherwise, the NBS shall undertake against such bank a new measure referred to in Article 112, paragraph 1 of the Law, in line with the criteria set out in Article 120 of the Law.

8. The ordering letter referred to in Article 115 of the Law (hereinafter: ordering letter) shall be sent to the bank where supervision established

actions and/or failure to act that are in breach of regulations or standards of safe and sound banking practice, and which may jeopardise its financial position.

Upon receiving the bank's action plan for the elimination of established irregularities, the NBS shall determine whether the plan was delivered within the timeframe specified in the ordering letter. To give its consent, the NBS shall assess whether the bank is able to eliminate the established irregularities by such activities.

The NBS shall inspect whether the bank eliminated the established irregularities after the expiry of the timeframe specified in the ordering letter or before the expiry of the timeframe if it receives the bank's notification on eliminated irregularities.

The NBS shall terminate supervision in the bank to which it sent an ordering letter once it ascertains that the established irregularities were eliminated within the timeframe stated in the ordering letter, or that only minor irregularities remain to be eliminated. Otherwise, the NBS shall undertake against such bank the new measure referred to in Article 112, paragraph 1 of the Law, in line with the criteria set out in Article 120 of the Law.

9. The NBS shall render a resolution on orders and measures pursuant to Article 116 of the Law.

A bank shall inform the NBS of the execution of orders and measures referred to in paragraph 1 hereof, in the manner and within timeframes envisaged by the resolution referred to herein.

The NBS shall supervise the execution of orders and measures from the resolution referred to in paragraph 1 hereof after expiry of the timeframe for their execution, or before the expiry of that timeframe if notified by the bank that the orders were executed.

The Governor or a person authorised by him may designate by a resolution NBS employees to check and monitor on a daily basis the execution of orders and measures pronounced by the resolution referred to in paragraph 1 hereof.

10. If the NBS establishes that a bank has executed all orders and

measures under the resolution referred to in Section 9, paragraph 1 hereof or that the irregularities against which such orders and measures were set were eliminated to such an extent that only the minor ones remained, it shall terminate the supervision procedure. Otherwise, the NBS shall undertake against such bank a new measure referred to in Article 112, paragraph 1 of the Law, in line with the criteria set out in Article 120 of the Law.

11. If based on the available data on bank's operation the NBS establishes that the bank against which one of the measures referred to in Article 112, paragraph 1, items 1–3 of the Law was set, has committed new irregularities within the meaning of Section 27 hereof, or failed to act upon orders arising from the measure, or that its financial position has deteriorated within the timeframe for the execution of orders arising from the measure, the NBS may immediately conduct new supervision or undertake against such bank the new measure referred to in Article 112, paragraph 1 of the Law, in line with the criteria set out in Article 120 of the Law.

If the NBS decides to conduct new supervision of the bank in line with paragraph 1 hereof, it shall terminate the current supervision procedure and shall concurrently initiate a new supervision procedure or pronounce the measure referred to in Article 112, paragraph 1 of the Law, based on the outcome of new supervision.

12. By the resolution on institution of receivership referred to in Article 117 of the Law (hereinafter: receivership), the NBS shall:

- appoint two official receivers,
- specify the duration of receivership in line with the Law,
- specify receivers' fees.

The NBS may relieve receivers of duty if it establishes that they do not perform the activities entrusted to them in a satisfactory manner or for any other justified reason.

13. Institution of receivership in a bank shall be entered in the companies register on the day of adopting the resolution referred to in Section 12, paragraph 1 hereof, which the NBS shall submit to the agency in charge of keeping the register.

Data on receivers as persons authorised for representation and their certified signatures shall be delivered to the agency referred to in paragraph 1 hereof, so as to be entered in the register referred to in that paragraph, concurrently with the resolution referred to in Section 12, paragraph 1 hereof.

When taking legal action in the bank's name and for its account, signatures of both receivers are obligatory.

14.Receivers shall assess the bank's financial position on the day of institution of receivership and shall deliver such assessment to the NBS and the Deposit Insurance Agency (hereinafter: Agency).

15.Receivers shall call the bank's assembly without delay after the institution of receivership, for the purpose of holding a meeting within the timeframe not shorter than five or longer than ten days from the day of institution of receivership.

At the meeting referred to in paragraph 1 hereof, the receivers shall inform the bank's shareholders of legal ramifications of receivership and shall require from majority shareholders to draft an action plan and deliver it to receivers within 20 days from institution of receivership.

Bank shareholders with over 50% of voting rights shall adopt the action plan referred to in paragraph 2 hereof.

The action plan referred to in paragraph 3 hereof shall contain an overview of bank's activities for elimination of irregularities in its operation and improvement of its financial position while ensuring the depositors' interests, and the timeframe for the implementation of such activities.

The activities referred to in paragraph 4 hereof may include capital increase performed by shareholders or other persons, merger with or absorption by another bank, etc.

16.Receivers shall submit to the NBS and the Agency the assessment referred to in Section 14 hereof and the action plan referred to in Section 15, paragraph 2 hereof, not later than one month from institution of receivership.

By no later than 15 days following the receipt of the action plan referred to in paragraph 1 hereof, the NBS shall inform the receivers of its approval/disapproval of the plan.

The NBS shall grant its approval of the action plan referred to in paragraph 1 hereof if it establishes that the activities specified in the plan shall eliminate irregularities detected in bank's operation and improve its financial position.

If the NBS refuses to grant its approval of the action plan referred to in paragraph 1 hereof, it shall render a resolution on revocation of the bank's operating license and shall nominate the Agency to act as an administrator.

17. The bank's assembly and its boards, persons vested with special authorisations and responsibilities, and bank employees shall make all documents available to receivers and prepare a joint report on the takeover of operations.

18. Receivers shall inform the NBS of implementation of the action plan referred to in Section 16, paragraph 1 hereof and deliver to the NBS at least once a month:

- data on bank's operation;
- reports on implementation of the plan and its impact on bank's financial position;
- overview of issued enactments under the purview of the bank's board of directors and executive board;
- overview of shareholders' assembly decisions that they failed to comply with and reasons for such non-compliance.

Receivers shall immediately notify the NBS of:

- their intention to convene a meeting of the shareholders' assembly, decisions they intend to propose at the meeting, and the outcome of the meeting;
- decisions issued by the shareholders' assembly;
- their assessment that receivership shall neither eliminate irregularities nor improve the bank's financial position – if they assessed so;
- other circumstances, if deemed necessary.

19. Receivers may call an emergency session of the bank's assembly within no less than five days and may propose the adoption of decisions.

Subject to NBS's approval, receivers may adopt decisions that they proposed to the bank's assembly for adoption but were rejected.

Receivers shall immediately submit to the bank's assembly the decisions taken with the approval referred to in paragraph 2 hereof and shall also inform the assembly that such decisions have the same legal effect as those issued by the bank's assembly.

20. In the course of receivership and upon the receivers' proposal, the NBS may issue a resolution ordering the bank to suspend the settlement of its obligations over the period of up to 30 days, in line with Article 117b of the Law.

21. Receivership shall not be instituted for longer than six months – bank's bodies must be appointed within that timeframe.

The NBS may by a resolution extend the receivership by three months if assessed necessary for the purpose of concluding the activities initiated and accomplishing the objectives of receivership.

22. The NBS shall terminate receivership in the bank:

- after the expiry of receivership;
- before the expiry of receivership – if receivers or the NBS establish that the bank's financial position was not improved by the institution of receivership;
- before the expiry of receivership – if receivers or the NBS establish that the bank's financial position improved to such an extent that receivership is no longer required.

23. The NBS shall by a resolution revoke a bank's operating license in the cases prescribed by Article 130, paragraph 1 of the Law, i.e. in the cases specified in paragraph 2 thereof.

24. For the purpose of setting a fine to members of the bank's board of directors or executive board under Article 113, paragraph 1 of the Law, the

NBS shall request the bank to deliver within the timeframe set, data on earnings of persons to be fined as well as data on current accounts of such persons opened with banks.

25. A bank shall deliver to the NBS proof of payment of fines referred to in Article 113, paragraph 1 of the Law to the NBS giro account – by no later than 15 days from receiving the resolution on fines.

If the bank or member of the bank's board of directors or executive board fail to pay the fines referred to in paragraph 1 hereof, the NBS shall initiate the enforcement of claims.

26. It shall be understood that the bank did not enable the supervision of its operation by the NBS if it fails to comply with Article 104 of the Law and in the following cases:

- if a bank fails to deliver within the specified timeframe all requested data and evidence, particularly data set by law, secondary legislation or prudential banking practices;
- if, on purpose or by gross negligence, a bank delivers inaccurate or incomplete data;
- if a bank fails to secure appropriate conditions to authorised persons so that they may conduct supervision, i.e. fails to ensure that they are not hampered in their work by bank employees and other persons;
- if a bank fails to deliver three consecutive reports that it is required to deliver periodically in accordance with law or secondary legislation, and if it fails to deliver the requested reports or data within the specified timeframe even after the NBS's repeated request.

27. Irregularities in bank operation shall be understood to mean bank's failure to act in compliance with the Law, NBS's regulations and other regulations, prudential banking practices, or any other action that jeopardises the bank's safety and soundness.

28. To collect, process and analyse data, the NBS may conduct diagnostic examination of bank's operation by on-site inspection of its business books and other documentation, whereon it shall compile a report not to be delivered to the bank.

29. Provisions of this Decision shall apply accordingly to bank supervision

conducted by the NBS based on authorisations arising from other laws, and to bank supervision conducted by the NBS at the request and for the needs of other competent domestic government bodies and institutions.

30. Supervision procedures instituted prior to the implementation of this Decision shall be completed in accordance with the Law and this Decision.

31. This Decision repeals the Decision on Detailed Conditions and Manner of Conducting Bank Supervision by the National Bank of Serbia (RS Official Gazette, No 51/2006).

32. This Decision shall enter into force on the next day following its publication in the RS Official Gazette.

NBS EB, No 37  
10 June 2011  
Belgrade

Chairman  
of the NBS Executive Board  
G o v e r n o r  
National Bank of Serbia

dr Dejan Šoškić, *sign*