

Pursuant to Article 5, paragraph (1), item h) and Article 19, paragraph (1), item c) of the Law on the Banking Agency of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, No. 75/17) and Articles 96, 97 and 248 of the Banking Law (Official Gazette of the Federation of BiH, No. 27/17), the Management Board of the Banking Agency of the Federation of Bosnia and Herzegovina, at its session held on 13 October 2017, adopted the following

## **DECISION ON PURCHASE AND SALE OF BANK INVESTMENTS**

### **1. GENERAL PROVISIONS**

#### **Article 1**

##### **Subject of Decision**

- (1) This Decision shall prescribe the minimum standards and conditions that shall have to be met by the investments that are subject to purchase and sale, general and special conditions for purchase and sale, the financing of purchase and sale, the manner of appraising the value of the subject of purchase and sale, and the documentation that the bank shall submit to the Banking Agency of the Federation of Bosnia and Herzegovina (hereinafter: the Agency) for the purpose of meeting the prescribed conditions.
- (2) All banks headquartered in the Federation of Bosnia and Herzegovina (hereinafter: the Federation), to which the Agency has issued a banking licence, and organisational units of the bank headquartered outside of the Federation, as well as all other financial sector entities to which the Agency has issued an operating licence, shall be under the obligation to apply the provisions of this Decision.
- (3) Issues relating to the purchase and sale of bank investments that are not regulated under this Decision, but are regulated under the law or another regulation of the Agency, shall be subject to the application of that law or another regulation.

#### **Article 2**

##### **Definitions and scope**

- (1) Individual definitions and terms that shall be used in this Decision shall have the following meanings:
  - a) **Investments** in the context of this Decision shall be:
    - 1) receivables from credits, loans, investments held to maturity, excluding investments in debt securities;
    - 2) receivables from credit principal, interest, fee, and other receivables that are included in the calculation of the effective interest rate for the approved credit;
    - 3) other receivables on the basis of which the bank may be exposed to credit risk of counterparty default.
  - b) An **investment due**, for the purpose of this Decision, shall be an investment that, in accordance with the provisions of the investment contract concluded between the user and the bank, was declared fully matured and in the case of which the contract was terminated.
  - c) A **materially significant amount of an investment for the purchase and sale of the investment** shall be understood to mean the nominal bookkeeping value defined in item d) of this Article of one or more than one individual investments, whose cumulative amount, according to reports submitted to the Agency, at least 12 months prior to the

date of informing the Agency of the intended purchase and sale, is equal to or higher than 10% of eligible capital (regulatory capital defined in item f) of this Article) of the selling bank. In exceptional cases, for banks that have eligible capital exceeding KM 400 million, the materially significant amount for the purchase and sale of an investment shall be understood to mean the nominal bookkeeping value of one or more than one individual investments whose cumulative amount is equal to or higher than KM 40 million in the period of 12 months before informing the Agency of the intent of the purchase and sale of the investment.

The materially significant amount of an investment shall be determined in relation to one purchaser and a group of persons connected with them as regulated under Article 2, paragraph (1), item u) of the Banking Law (hereinafter: the Law).

- d) The **nominal bookkeeping value of the investment** shall comprise the bookkeeping amount of the receivable that is disclosed in the balance sheet of the selling bank and that is not reduced by value adjustments for the principal, interest, and fee.
  - e) **Derecognition** shall be the removal of previously recognised financial assets or financial liabilities from the report on financial position of the entity. The purchase and sale contract shall define that the investment is fully transferred to the purchaser, as are all rights, risks, and benefits that result from the placement and the investment thus ceases to be recognised in the balance sheet of the selling bank.
  - f) **Eligible (regulatory) capital** shall represent the sum of core and supplementary capital, after regulatory adjustments, and shall represent the amount disclosed in the most recent report submitted to the Agency. If there is a significant change in eligible capital (for example, recapitalisation, recorded losses) in the reporting period, the amended eligible capital shall be used for the calculation of the materially significant amount of the investment.
  - g) The **user of the investment** that is subject to the purchase and sale shall be a legal or natural person for the purpose of this Decision and a user of financial services for the purpose of the Law regulating the protection of users of financial services, who, as the debtor, holds the investment and all liabilities with regard to risks and benefits from the investment that is subject to the purchase and sale.
  - h) A **purchase and sale of investments** is any contract transferring the investment or all risks and benefits from the investment from the selling bank to the purchaser, resulting in the derecognition of the investment from the balance sheet of the bank in accordance with the International Financial Reporting Standards.
- (2) Individual definitions from this Decision, excluding the terms listed in paragraph (1) of this Article, shall have the meanings listed in Article 2 of the Law.

### Article 3

#### Subject of contract on purchase and sale of investments

- (1) Under the contract on purchase and sale of investments, the selling bank shall transfer to the purchaser the investment due or the risks and benefits from the investment, resulting in the permanent derecognition of the investment from the balance sheet of the bank in accordance with the International Financial Reporting Standards.
- (2) The purchase and sale of investments that have not yet matured or the purchase and sale of risks and benefits from investments that have not yet matured, with the objective of the permanent derecognition of the investments from the balance sheet of the selling bank in accordance with the International Financial Reporting Standards may only be performed between banks.
- (3) The selling bank can neither contract the purchase and sale of portions of investments nor of portions of rights and obligations arising from investments (partial cash flows from investments) nor may it assess whether the sold investment would be recorded in the

balance sheet or not. Instead, it must contract a purchase and sale exclusively of the entire investment and all rights, supporting rights and obligations arising from the investment and derecognise it from the balance sheet in its entirety.

- (4) The contract on purchase and sale shall especially contract that the subject of the contract on purchase and sale may not be transferred further from the purchaser of the subject of the investment.
- (5) The selling bank may conclude the contract on purchase and sale of investments referred to in paragraph (1) of this Article after obtaining approval from the Agency for the purchase and sale of investments stipulated under this Decision, thereby confirming that general requirements for the purchase and sale of investments have been met, along with special conditions for the purchase and sale of materially significant amounts of investments, prescribed under the Law and this Decision.
- (6) The bank may cede investments from credits and other services approved to users of financial services under regulations governing the protection of users of financial services exclusively to other banks or financial organisations that have been issued an operating licence by the Agency.

#### **Article 4**

##### **Conditions that must be met by the purchaser of the subject of purchase and sale**

- (1) For the purpose of this Decision, the purchaser of the subject of the purchase and sale may be any legal person dealing with the purchase and sale of investments and the purchaser shall have to hold an operating licence and be under the supervision of the Agency for investments approved to users of financial services under regulations governing the protection of users of financial services.
- (2) Prior to making the decision on concluding the contract, the selling bank shall perform an assessment of the purchaser in terms of the legal status, their business and financial, staffing and technical capacities for taking over the subject of the purchase and sale.
- (3) The assessment of the financial capacity of the purchaser shall be performed by the bank by verifying the following:
  - a) The regularity of credit history in the current year – review of the report from the CCR database of the Central Bank of BiH (hereinafter: the CBBH), according to which not a single exposure was recorded as being non-performing, nor was there an exposure that any financial institution had written off at the expense of its business operations.
  - b) The financial strengths and capacities for the purchase of the investment – proof and data on:
    - 1) sources of funding for the payment of the contracted price,
    - 2) the level of total net operating assets of the purchaser, which have to be at least on the level of the amount of the purchased investment, according to the most recent financial statements compiled by the purchaser,
    - 3) total capital of the purchaser, which has to amount to at least one tenth of the amount of the contracted value of the subject of the purchase and sale, according to the most recent financial statements compiled by the purchaser,
  - c) the relationship of the buyer with the selling bank and the debtor – statement on the (non-)existence of a mutual relationship for the purpose of the definition referred to in Article 2, item u) and item v) of the Law.
- (4) The assessment of the staffing and technical capacities of the purchaser of the subject of the purchase and sale shall be performed by the selling bank by verifying the following:
  - a) Staffing capacity – assessment of the owner and the key employees of the purchaser from the perspective of the knowledge, qualifications and capacities relating to the material significance of the subject of the purchase, and that they have not been

sentenced for any criminal offence in the area of finance, capital markets, money laundering and financing of terrorist activities, and

- b) Technical capacity – proof of information technology equipment and capacity to monitor and record the collection of the bought out receivable and report and update data in the Central Credit Register in accordance with the regulations of the CBBH, except in the event that the bank performs the collection of the ceded receivable from the user in the name and on behalf of the purchaser.
- (5) If the purchaser of the subject of the purchase and sale is from the same banking group in BiH or if the selling bank has a controlling share with the purchaser of the subject of the purchase and sale, the selling bank shall act in accordance with the provisions of Article 6, paragraph (2) of this Decision.
- (6) If the purchaser of the investment is a bank to which the Agency has issued an operating licence, the selling bank shall not be under the obligation to perform the assessment of the staffing and technical capacities of the purchaser referred to in paragraph (4) of this Article.

## **Article 5**

### **Obligations of the selling bank before making decision on the purchase and sale of investments**

- (1) Prior to deciding to conclude a contract on the purchase and sale of investments, the selling bank shall:
- a) ensure an appraisal of the value of receivables by an independent appraiser,
  - b) verify whether the amount of the investment intended for the purchase and sale meets the criteria on materially significant amounts of investments for the purchase and sale of investments referred to in Article 2, item c) of this Decision,
  - c) regardless of the level of the amount of the investment or the risks and benefits from the investment, which are intended to be transferred from the selling bank to the purchaser under the contract, evaluate the effects of the sale of the investment on the bank after the sale in relation to the following:
    - 1) the bank's financial result,
    - 2) business continuity,
    - 3) the bank's reputation,
    - 4) risk exposure,
    - 5) the bank's solvency,
    - 6) the bank's liquidity, and
    - 7) the protection of users of financial services, if placements approved to users of financial services are the subject of the sale.
  - d) assess the purchaser in terms of their financial, staffing, and technical capacities to take over the subject of the purchase and sale, in accordance with the general requirements that have to be met by the purchaser of the subject of the purchase and sale referred to in Article 4 of this Decision.
- (2) The independent appraiser referred to in paragraph (1), item a) of this Article may be:
- a) a natural person who has the title of an authorised appraiser and performs tasks of appraising the economic value of legal persons, assets, liabilities, and capital in accordance with a special regulation in Bosnia and Herzegovina, and
  - b) a company for economic value appraisal, which meets the conditions stipulated under the special regulation in Bosnia and Herzegovina and which has entered the activity of economic value appraisal in the court register, under the condition that it employs at least one authorised appraiser who signs the appraisals of the economic value of legal persons, assets, liabilities, and capital.

## **2. GENERAL AND SPECIAL CONDITIONS FOR THE PURCHASE AND SALE OF INVESTMENTS**

### **Article 6**

#### **(General conditions for the purchase and sale of investments)**

- (1) In order for the selling bank to be able to conclude a contract on the sale of an investment, it is necessary that the following conditions are met:
  - a) the purchase and sale of the investment has an economic rationale proven by the evaluation referred to in Article 5, paragraph (1), item c), lines 1), 5) and 6),
  - b) the selling bank has compiled an evaluation of the effects of the sale of the investment in accordance with the provisions of Article 5, paragraph (1), item c), line 4),
  - c) the financing of the sale, management and collection of the investment is carried out in accordance with the provisions of the Law and Article 8 of this Decision,
  - d) the objective of the sale is not to generate income that the selling bank would not be able to generate otherwise.
- (2) The selling bank may conclude a contract on the sale of an investment with a purchaser from the same banking group in BiH or the selling bank has a controlling share in the purchaser of the subject of the purchase and sale for the purpose of the provisions of Article 2, item k) of the Law if:
  - a) the objective of the purchase and sale of the investment shall not be to avoid meeting the capital requirements, other prudential as well as other requirements stipulated under the Law, this Decision, and other regulations adopted pursuant to the Law, on an individual basis for the seller and on a consolidated basis for the banking group,
  - b) the objective of the purchase and sale shall not be to generate income that could not be generated otherwise on an individual basis for the selling bank or on a consolidated basis for the banking group.

When it concerns the purchaser of the subject of the purchase and sale, as referred to in this paragraph, the selling bank shall analyse the effects of the purchase and sale of the investment on the bank's capital and current business operations as well as the effects on the level of the group of banks and related legal persons on a consolidated basis.
- (3) The selling bank shall ensure that the investments or risks and benefits from the investments are permanently transferred to the purchaser.
- (4) The selling bank shall not assume, indirectly or directly, any responsibility for the quality of the sold investments, including their collectability and the debtor's credit rating, which served as a basis for fixing the contracted selling price.
- (5) In case of occurrence of reasons for breach of contract on the sale of investments, the selling bank and the purchaser may not negotiate a return of the investment, but each contracting party has the right to compensation of damages due to breach of contract.

### **Article 7**

#### **Special conditions for purchase and sale of materially significant amounts of investments**

- (1) The selling bank may conclude a contract on the purchase and sale of a materially significant amount of investment provided that, in addition to the general conditions for the purchase and sale of investments referred to in Article 6 of this Decision, all the following special conditions are also met:
  - a) a permanent transfer of the investment or a transfer of risks and benefits from the investment has been ensured in accordance with Article 10 of this Decision,
  - b) the selling bank shall not take, indirectly or directly, responsibility for the quality of the sold investments, including their collectability and the debtor's credit rating, based on which the contracted selling price was determined, and

- c) the management and collection of the sold investments is carried out in accordance with regulations and the provisions of Article 9 of this Decision.
- (2) The selling bank shall apply in writing for the Agency's approval on the fulfilment of general and special conditions for purchase and sale and shall submit the documentation prescribed under Article 11 of this Decision no later than 60 days before the conclusion of a contract on the purchase and sale of a materially significant amount of investment.
- (3) If the selling bank has concluded multiple individual contracts on the purchase and sale of investments with one single purchaser and with their related entities in the manner regulated under Article 2, paragraph (1), item u) of the Law, whose cumulative value for the period of the past 12 months does not represent a materially significant amount as regulated under Article 2, paragraph (1), item c) of this Decision, it shall comply, in addition to the general conditions referred to in Article 6 of this Decision, with the special conditions referred to in paragraph (1) of this Article when concluding a new contract on the purchase and sale of an investment, by which the cumulative amount of the investments would become materially significant.

### **3. FINANCING OF PURCHASE AND SALE, MANAGEMENT, AND COLLECTION OF SOLD INVESTMENTS**

#### **Article 8**

##### **Financing of purchase and sale of investments**

- (1) The selling bank shall stipulate in the contract that the purchaser shall meet their payment obligation by disbursing the full contracted price into the selling bank's account immediately after the conclusion of the investment sales contract and no later than within 60 days.
- (2) Notwithstanding paragraph (1) of this Article, in special cases, the Agency may, at the request of the selling bank, allow other methods and deadlines for the payment of the contracted price.
- (3) The selling bank shall not, directly or indirectly, finance the sale of its investments or risks and benefits from investments, except if the exposure that would occur on the basis of financing would be fully secured with a purposeful unconditional term cash deposit, deposited with the selling bank, which matches that exposure in terms of the amount, currency and maturity.

#### **Article 9**

##### **Management and collection of sold investments**

- (1) If the selling bank assumes the obligations of management and collection of sold investments, it may contract a fee for the performance of those tasks equal to the actual costs and, when collecting sold investment, it shall apply the same business policies and procedures it applies when collecting its own investments, with these being an integral part of the contract on the purchase and sale of investments.
- (2) If the purchaser assumes the obligation of management and collection of sold investments, the selling bank shall stipulate in the contract that they are to perform those procedures in the manner that respects and protects the integrity and reputation of all debtors whose liabilities were the subject of the purchase and sale of investments and that the aforementioned are not to be put in a less favourable position compared to the one they had towards the selling bank as debtors, including the obligation and manner of submitting and updating data for investments subject to sale to the Central Credit Register in compliance with regulations of the CBBiH.
- (3) The selling bank shall ensure that all risks and costs from the process referred to in paragraph (1) of this Article are transferred to the purchaser.

- (4) The collection of investments for the purpose of this Article shall also include activities necessary for collection:
  - a) from security instruments, and
  - b) in the case of liquidation and bankruptcy proceedings against the user of the investment, as defined in Article 2, paragraph (1), item g) of this Decision.

#### **4. DURATION OF INVESTMENTS, DOCUMENTATION THE BANK SUBMITS TO AGENCY FOR THE PURPOSE OF MEETING THE PRESCRIBED CONDITIONS AND CONCLUSION OF CONTRACT**

##### **Article 10**

##### **Duration of transfer of investments or risks and benefits from investments**

- (1) The selling bank shall remove the sold investment from the balance sheet the moment the obligations under the contract on the purchase and sale of the investment are carried out, after ensuring, in accordance with internal enactments of the bank, a written decision of the competent authority or another bank body on the permanent write-off of the uncollected investment for the difference between the nominal and contracted price of the aforementioned investment.
- (2) The contracting parties shall ensure the permanent transfer of the investment or risks and benefits from the investment, in the event that a reason for terminating the investment sales contract occurs, with a contractual provision compliant with the provisions of Article 6, paragraph (5) of this Decision.

##### **Article 11**

##### **Documentation**

- (1) In addition to the request for approval of the Agency referred to in Article 15, paragraph (1) of this Decision, the selling bank shall submit to the Agency the following documentation:
  - a) draft contract on the purchase and sale of the investment that the selling bank intends to conclude with the purchaser, including the date of the intended conclusion of the contract,
  - b) explanation of the economic rationale and reasons for the transfer of the investment, i.e. the risks and benefits from the investment, with proof of fulfilment of the general and special conditions referred to in Articles 6 and 7 of this Decision,
  - c) results of the assessment of the effects of the purchase and sale of the investment on the bank after the sale referred to in Article 5, paragraph (1), item c) of this Decision,
  - d) description of the manner of financing, i.e. the source of financing of the purchase of the investment or the risks and benefits under the conditions stipulated in Article 4, paragraph (3), item b) of this Decision (if the purchaser is not a client of the bank, the bank shall carry out increased identification and monitoring measures in the interest of carrying out measures aimed at the prevention of money laundering and terrorist financing), list of persons related to the purchaser of the investment in the manner regulated under Article 2, paragraph (1), item u) of the Law and description of the manner in which they are connected.
- (2) In addition to the data and documentation listed in paragraph (1) of this Article, the Agency may request, and the selling bank shall submit, other documentation it deems necessary for the assessment of the fulfillment of conditions for the purchase and sale of investments prescribed under the Law and this Decision.

##### **Article 12**

### **Approvals of the Agency**

- (1) The Agency shall, on the basis of the documentation prescribed in Article 11 of this Decision, after assessing that the general conditions for the purchase and sale of investments have been met and that the special conditions for the purchase and sale of materially significant investments have been met, issue an approval for the purchase and sale of investments to the selling bank, no later than 30 days from the date the complete request was submitted,
- (2) If the Agency assesses that one of the conditions prescribed under this Decision has not been met, it shall invite the selling bank to undertake actions to meet that condition, no later than within the deadline set by the Agency.
- (3) If the selling bank meets the condition within the set deadline, the Agency shall issue the approval in accordance with paragraph (1) of this Article.
- (4) If the selling bank fails to meet the condition within the set deadline referred to in paragraph (2) of this Article, the Agency shall not issue an approval to conclude a contract on the purchase and sale of investments to the selling bank and it shall warn the aforementioned of the failure to meet the necessary conditions from this Decision and reject the request as irregular with a conclusion.
- (5) If, in the period from the date a request for approval was submitted to the Agency and before the issuance of the approval of the Agency referred to in paragraph (1) of this Article, there are changes in any facts or circumstances connected with the purchase and sale of the investment, the selling bank shall inform the Agency of those changes in writing, and the Agency shall take into account the new facts and circumstances when assessing whether the conditions from this Decision have been met in the course of the review procedure.
- (6) In exceptional cases, if the Agency assesses that the changes in the facts and circumstances are important for the assessment of the fulfillment of the conditions prescribed under this Decision, it shall inform the selling bank of the start of the new deadline referred to in paragraph (1) of this Article.
- (7) If, in the period after the issuance of the approval of the Agency and prior to the conclusion of the contract on the purchase and sale of the investment, there are changes in the facts and circumstances related to the sale and purchase of the investment, the selling bank shall inform the Agency of those changes. The new deadline referred to in paragraph (1) of this Article shall start from the date that information was submitted.
- (8) The Agency may assess that the change in the facts and circumstances has not affected the issued approval on meeting the conditions and it shall inform the selling bank of that.

### **Article 13**

#### **Conclusion of contract on the purchase and sale of investments**

- (1) The selling bank may conclude a contract on the purchase and sale of investments with the purchaser after obtaining the approval of the Agency which assessed that all the necessary conditions prescribed under the Law and this Decision have been met
- (2) The selling bank may conclude the contract referred to in paragraph (1) of this Article within a further deadline of 60 days from the date of receiving the approval of the Agency. If the selling bank fails to conclude the contract on the purchase and sale of investments within the aforementioned deadline, the approval of the Agency shall cease to be valid.
- (3) The selling bank shall inform the Agency of the conclusion of the contract on the purchase and sale of investments and submit a copy of the contract to the Agency within 7 days.
- (4) The selling bank cannot amend the contract on the purchase and sale of investments without approval of the Agency.



- (5) The selling bank shall inform the Agency of a potential withdrawal from concluding the contract on the purchase and sale of investments within 7 days.

#### **Article 14**

##### **Protection of debtors and users of financial services**

- (1) When concluding the contract on the purchase and sale of investments, the selling bank and the purchaser of the investment that is managing and performing the collection of the purchased investments shall ensure that the debtor is not put in a less favourable position compared to the one they would have if that investment had not been transferred, and the debtor must not be exposed to additional costs because of that. For investments approved to users of financial services from regulations on the protection of users of financial services, regardless of the amount of the investment, the selling bank shall ensure that the users are not put in a less favourable position compared to one they had towards the selling bank as debtors.
- (2) The selling bank and the purchaser of the investment, on the basis of credits and other services approved to users of financial services, shall apply the provisions of special regulations governing the protection of users of financial services and other regulations governing consumer protection.
- (3) The selling bank shall inform the debtor of the transfer of the investment and submit information on the purchaser of the investment within 30 days.

#### **Article 15**

##### **Records on the purchase and sale of investments**

- (1) The selling bank shall submit, both in writing and electronically, the request for the issuance of an approval for the purchase and sale of investments on the form in Annex 1, which is an integral part of this Decision.
- (2) The selling bank shall keep records on all sold investments, which shall contain data on the concluded contracts on the purchase and sale.
- (3) The selling bank shall submit to the Agency, both in writing and electronically, a report on the completed sale of the investment to the purchaser. After the completed sale of the investment to the purchaser, the report is submitted on the form in Annex 2, which is an integral part of this Decision, as of the date of the last day of the month in which the sale was completed and no later than 5 days after the end of the month.

#### **Article 16**

##### **Entry into force**

This Decision shall enter into force on the eighth day following its publication in the Official Gazette of the Federation of BiH.

**No: U.O.-08-12/17  
Sarajevo, 13 October 2017**

**CHAIRWOMAN  
OF THE MANAGEMENT BOARD  
Ljerka Marić, M.Sc. (Econ.)**