**REPUBLIC OF ALBANIA**

**BANK OF ALBANIA**

**SUPERVISORY COUNCIL**

**DECISION**

**No. 56, dated 03/10/2017**

**ON THE APPROVAL OF THE REGULATION “ON THE RESOLUTION FUND AND THE PROCEDURES FOR ITS MANAGEMENT”**

In accordance to and in view of the implementation of article 12, letter “a”, and article 43, letter “c”, of Law no. 8269, dated 23/12/1997, “On the Bank of Albania”, as amended; and article 6, point 6, article 71, article 73, point 1 and 6, article 75, point 1 and 2, article 76, point 2, article 77, point 6, article 79, as well as article 87 of Law no. 133, dated 22/12/2016, “On the recovery and resolution of banks in the Republic of Albania”, as amended, and upon the proposal of the Resolution Department, the Supervisory Council of the Bank of Albania

DECIDED:

1. To approve the Regulation “On the resolution fund and the procedures for its management”, according to the text attached to this decision.
2. The Resolution Department and the Deposit Insurance Agency shall be in charge of the follow-up and implementation of this Decision.
3. The Cabinet of the Governor and the Research Department shall be in charge of the publication of this Decision in the Official Gazette of the Republic of Albania and the Official Bulletin of the Bank of Albania, respectively.

The decision shall enter in force 15 days after its publication in the Official Gazette.

**SECRETARY CHAIRMAN**

**Elvis ÇIBUKU Gent SEJKO**

**CHAPTER I**

**GENERAL**

**Article 1**

**Objective**

The objective of the Regulation is to define:

1. the set-up of the Resolution Fund;
2. the calculation methodology of the level of the Resolution Fund;
3. the methodology to define the annual contributions from each bank, as well as the procedure for the pay-out of the relevant contributions;
4. the extraordinary contributions as well as circumstances and criteria for the full or partial suspension of the pay-out of the relevant contributions;
5. the procedure for the approval of the investment policy of the Resolution Fund;
6. the procedure for the approval of the amount and modality of the annual payment of the cost reimbursement for the administration of the Resolution Fund;
7. the procedure on consulting the selection criteria for the external auditors of the annual financial statements of the Resolution Fund;
8. reporting and exchange of information between the Bank of Albania and the Deposit Insurance Agency with regard to the Resolution Fund.

**Article 2**

**Legal basis**

This Regulation is drafted on the basis of and in view of the implementation of:

1. article 12, letter “a”, and article 43, letter “c”, of Law No. 8269, dated 23/12/1997, “On the Bank of Albania”, as amended;
2. article 6, point 6, article 71, article 73, point 1 and 6, article 75, point 1 and 2, article 76, point 2 and article 77, point 6, article 79, as well as article 87 of Law No. 133, dated 22/12/2016, “On the recovery and resolution of banks in the Republic of Albania” (hereinafter the Law “On the recovery and resolution”);
3. Law No. 9662, dated 18/12/2006, “On banks in the Republic of Albania”, as amended.

**Article 3**

**Subjects**

The subjects of this Regulation are the banks and branches of foreign banks licensed to exercise their banking activities in the Republic of Albania and the Deposit Insurance Agency.

**Article 4**

**Definitions**

1. Terms used in this Regulation shall have the same meaning as the terms defined in the Law “On the recovery and resolution” and the Law “On banks in the Republic of Albania”, as amended.
2. Except as provided for in point 1 of this article, in view of the implementation of this Regulation, the following terms shall have these meanings:
   1. **“Respective Administrator”** is the administrator of the Bank of Albania, who is in charge of the Resolution Department, according to the definition of the organizational structure of the Bank of Albania.
   2. **Target level of the Resolution Fund** is the fund level calculated yearly from the Bank of Albania based on the most recent audited data of banks, according to point 1, article 75 of the Law “On the recovery and resolution’’.
   3. **Annual level of the Resolution Fund** is the calculated amount of the fund to be paid early by all banks in order to meet the target level according to letter “b” of this point.
   4. **Annual contribution** is the annual amount paid by every bank, which serves to complete the annual level of the Resolution Fund, according to letter “c” of this point.

**CHAPTER II**

**RESOLUTION FUND**

**Article 5**

**Establishing the Resolution Fund**

1. The Resolution Fund is created from the share of contributions paid by banks until January 10, 2018, to ADIA’s account in the Bank of Albania, according to article 20 of this Regulation.
2. ADIA shall open the Resolution Fund account in the Bank of Albania, not later than one month after the entry into force of this Regulation.
3. The financial resources of the Resolution Fund are established in article 72 of the Law “On the recovery and resolution”.
4. The Resolution Fund shall solely be used in cases provided for in article 74 of the Law “On the recovery and resolution”.

**Article 6**

**Target level of the Resolution Fund**

1. The Resolution Fund should reach a level of 0.5% of the total liabilities of all banks, calculated as the difference between total assets of all banks and their regulatory capital until July 11, 2027.
2. Every year the Bank of Albania shall calculate the target level of the Resolution Fund based on the data of audited balances of all banks, aiming to meet the level of the Resolution Fund, according to point 1 of this article.
3. The target level of the Resolution Fund shall be calculated according to the following formula:

**NSF*n* = 0.5%\* (Total of assets *n*-2 – regulatory capital *n*-2)**

where:

* ***n*** – takes values from 2018 to 2027. In case of an extension of the time limit to complete the fund from the Bank of Albania, according to point 2, article 75, of the Law “On the recovery and resolution”, the values of *n* shall be postponed in accordance to the new time limit.
* **NSF***n*– target level of the Resolution Fund for year *n*.
* **0.5%** – coefficient according to the provisions of the Law “On the recovery and resolution”.
* **Total of assets n-2** – total assets of all banks by the end of year *n*-2, according to the reports on audited financial statements in the Bank of Albania, in accordance to article 52, of the Law “On banks in the Republic of Albania”.
* **Regulatory capital n-2** – amount of regulatory capital of all banks by the end of year *n*-2, according to the reports on audited financial statements in the Bank of Albania, in accordance to article 52, of the Law “On banks in the Republic of Albania”.

**Article 7**

**Annual level of the Resolution Fund**

1. In order to meet the target level of the Resolution Fund, according to point 2, article 6 of this Regulation, the Bank of Albania shall calculate every year the annual level of the Resolution Fund according to the following formula:

where**:**

* **NVFNJ***n*– annual level of the Resolution Fund for year *n*.
* **State of fund *n*-1** – state of the Resolution Fund by the end of year *n*-1, according to ADIA report.

1. In the event of an extension of the time limit to complete the fund from the Bank of Albania, according to point 2, article 75, of the Law “On the recovery and resolution”, year 2027 in the formula in point 1 of this article shall be postponed in accordance to the new time limit.
2. Pursuant to the auditing of the financial statements on the state of the fund carried out by the external auditor, the Bank of Albania, if needed, shall make the respective corrections in calculating the annual level of the Resolution Fund for the upcoming year.

**CHAPTER III**

**ANNUAL CONTRIBUTION**

**Article 8**

**Calculation of the annual contribution**

1. In order to complete the annual level of the Resolution Fund, provided for in article 7 of this Regulation, banks shall pay an annual contribution to be calculated with the following formula:

**KVFn = NVFNJn x Weight of bankn**

where:

* **KVF*n*** – annual contribution of every bank for year *n*.
* **NVFNJ*n*** – annual level of the Resolution Fund for year *n*, calculated according to article 7 of this Regulation.
* **Weight of bank*n*** – weight of the liabilities of the bank for year *n*, calculated according to point 2 of this article.

1. The weight of bank liabilities is calculated according to the following formula:

where:

* **Bank assets *n*-2** – assets for each bank by the end of year *n*-2, according to reports on the audited financial statements in the Bank of Albania, in accordance to article 52, of the Law “On banks in the Republic of Albania”.
* **Regulatory capital of the bank *n*-2** – regulatory capital for each bank by the end of year *n*-2, according to the reports on audited financial statements in the Bank of Albania, based on article 52, of the Law “On banks in the Republic of Albania”.

**Article 9**

**Banks licensed throughout the transitory year**

1. Banks licensed throughout the transitory year, which exercise their banking activities only in a segment of the period of the calculation of contributions, shall pay a partial annual contribution in proportion with the period in which they have exercised their banking activity.
2. The partial annual contribution shall be calculated by multiplying the annual contribution by 1/12 for every full month of the period over which the bank has exercised its banking activity.

**Article 10**

**Notification and payment of the annual contribution**

1. The respective Administrator shall define, by special order, the amount of the annual contribution for each bank as well as the deadline for its payment.
2. The order on the payment of the annual contribution, according to point 1 of this article, shall be notified to ADIA and every single bank and shall consist of:
   1. the target level of the Resolution Fund;
   2. the annual level of the Resolution Fund;
   3. the state of the fund and the respective correction according to point 3, article 7 of this Regulation;
   4. the annual contribution of the bank;
   5. the account number of ADIA at the Bank of Albania, in which the payment of the contribution is made, according to point 2, article 5 of this Regulation;
   6. the deadline for the payment of the annual contribution.
3. The order shall be issued in written form and registered mail within February of each calendar year.
4. Banks shall pay their annual contributions in Lekë, in a lump sum, by 30 April of each year, in the account described in accordance to letter “e”, point 2 of this article.
5. In the event of a bank licensed over the transitory year, the partial annual contribution shall be paid together with the annual contribution for the upcoming period.
6. ADIA shall confirm to the banks and the Bank of Albania the receipt of the payment for the annual contribution within 15 days.
7. In the event the bank fails to pay the annual contribution within the deadline established in point 1 of this article, the Bank of Albania upon receiving notice, shall inform the bank and ADIA on the obligation to pay default interests according to point 2, article 81, of the Law “On the recovery and resolution” by means of a special order issued by the respective Administrator. ADIA shall calculate the default interests at the moment the contribution is paid from the bank.

**CHAPTER IV**

**EXTRAORDINARY CONTRIBUTIONS**

**Article 11**

**Extraordinary contributions**

1. Banks shall pay extraordinary contributions in cases provided for in point 1, Article 77, of the Law "On the recovery and resolution". The decision to pay extraordinary contributions is taken by the Supervisory Council of the Bank of Albania and shall include the amount of the extraordinary contribution for each bank and the established payment deadline.
2. The decision on the payment of the extraordinary contribution according to point 1 of this Article shall be notified to ADIA and every single bank.
3. If the bank fails to pay the extraordinary contribution within the deadline specified in point 1 of this article, ADIA shall notify the Bank of Albania within 15 days from the expiration of such deadline.

**Article 12**

**Suspension of the extraordinary contribution payment**

1. Upon a request from the bank, the Bank of Albania may suspend, fully or partially, the payment of the extraordinary contribution in accordance with point 5, Article 77, of the Law "On the recovery and resolution", if deemed necessary to protect its financial position.
2. The request under paragraph 1 of this article shall be submitted to the Bank of Albania, no later than 10 working days from the receipt of the order for the payment of the extraordinary contribution and shall be accompanied with the information necessary to carry out the assessment of the impact of the payment concerned on the financial position of the bank. The Bank of Albania may request additional information necessary to carry out the above assessment.
3. In examining the request of the bank, in order to determine whether the bank meets the criteria for suspension pursuant to paragraph 4 of this Article, the Bank of Albania shall assess, within 10 working days, the impact the payment of the extraordinary contribution may have on the ability to pay and the liquidity indicators of the bank.
4. The Bank of Albania (Supervisory Council) shall suspend, fully or partially, the payment of the extraordinary contributions of the bank when assessing that such payment would lead to the occurrence of one the following conditions:
5. the level of the capital adequacy ratio of the bank falls below the minimum level allowed within the next six months;
6. liquidity indicators fall below the minimum level allowed within the next six months.
7. The Bank of Albania shall limit the suspension period to the extent necessary to avoid risks to the financial position of the bank and shall monitor regularly whether the criteria for suspension provided for in paragraph 4 of this Article continue to exist.
8. The Bank of Albania may extend the suspension period only once, if the criteria for suspension set forth in paragraph 4 of this Article continue to exist. The extension may not exceed six months.
9. The decision on the suspension of the extraordinary contribution shall be notified to ADIA and the bank, respectively.

**Article 13**

**Assessment of the impact of the extraordinary contribution payment on the ability to pay**

1. The Bank of Albania shall assess the impact of the extraordinary contribution payment on the position of the regulatory capital of the bank, in accordance with point 3, Article 12 of this Regulation. The assessment should include an analysis of the impact the payment of the extraordinary contribution may have on the capital adequacy ratio.
2. For the purpose of this assessment, the value of the extraordinary contribution shall be deducted from the value of the regulatory capital of the bank.

**Article 14**

**Assessment of the impact of the extraordinary contribution payment on the liquidity indicators**

1. The Bank of Albania shall assess the impact of the extraordinary contribution payment on the liquidity indicators of the bank, according to point 3, article 12, of this Regulation. The assessment should include an analysis of the impact the payment of the extraordinary contribution may have on the liquidity indicators in national currency (Lekë) and in total.
2. The Bank of Albania shall assess the observance of the allowed level of liquidity indicators at the time of the payment of the extraordinary contribution, considering the outflow (as defined in the Regulation "On the management of the liquidity risk") equal to 100% of the value of the extraordinary contribution.

**CHAPTER V**

**PROCEDURES FOR THE ADMINISTRATION OF THE FINANCIAL ASSETS OF THE FUND**

**Article 15**

**Investment policy for the financial assets of the Resolution Fund**

1. The Resolution Fund shall be administered by ADIA in accordance with the investment policy for the financial assets of the fund.
2. The investment policy for the financial assets of the fund shall be approved by the respective Administrator upon the proposal of ADIA and shall be guided by investment principles on maintaining a low risk profile and high liquidity of financial assets, with the purpose of immediate availability of the fund, if needed.
3. Every year ADIA shall submit for approval to the Bank of Albania the fund investment policy. The proposal under this point is to be accompanied by an explanatory note concerning the project submitted.
4. The Bank of Albania shall approve the fund investment policy, including the criteria and limits of investment concentration and maturity of the financial assets of the fund as well as any changes thereof, upon a proposal from ADIA, not later than one month after the submission of such proposal.
5. ADIA shall administer the Resolution Fund in full independence from other funds. For this purpose, ADIA shall maintain special accounts and financial records of the fund as well as provide special reporting on the administration of the fund.

**Article 16**

**Annual payments for the administration of the Resolution Fund**

1. The Deposit Insurance Agency shall receive an annual fee to reimburse administration costs of the financial assets of the Resolution Fund.
2. Within the first quarter of every year, ADIA shall submit to the Bank of Albania the financial statements of the Resolution Fund for the previous year and a detailed report on the annual expenses incurred for the administration of the fund. The annual expenses shall include direct and indirect costs for the administration of the fund. Direct costs are expenses in the form of bank commissions and similar, directly related to the administration of the fund. Indirect costs are costs related to the staff of ADIA involved with the fund administration process, calculated proportionally by the number of transactions carried out for the investment of the assets of the fund.
3. Not later than one month after the submission of the report under paragraph 2 of this Article, the respective Administrator shall decide on the amount of costs reimbursed to ADIA for the administration of the fund.
4. ADIA shall withdraw the annual payment from the account of the Resolution Fund with the Bank of Albania, upon the approval of the Bank of Albania, and in accordance to point 3 of this Article.

**Article 17**

**External auditor of the financial statements of the Resolution Fund**

1. The annual financial statements of the Resolution Fund shall be audited by specialized external auditors approved by the Board of Directors of ADIA.
2. Criteria for the selection of external auditors shall be forwarded in advance to the Bank of Albania for an opinion. The Bank of Albania shall express its opinion on the selection criteria for external auditors of the fund not later than 15 days from their receipt, through the respective Administrator.
3. In any case, ADIA may not start the selection procedures for the external auditors before the expiration of the deadline set out in point 2 of this Article.

**Article 18**

**Exchange of information**

1. Every three months ADIA shall report to the Bank of Albania on the investment activity, the composition of the financial assets portfolio and the state of the Resolution Fund, and every year on the annual investment activity.
2. The Bank of Albania shall immediately inform ADIA about the adjustment or suspension of the investment activity in cases of need for liquidity or other urgent needs.

**CHAPTER VI**

**FINAL PROVISIONS**

**Article 19**

**Sanctions**

1. In case of infringements of the provisions of this Regulation by the banks, the Bank of Albania shall apply sanctions provided for in the Law "On the recovery and resolution".
2. For the purpose of implementing point 1 of Article 81 of the Law "On the recovery and resolution", the bank shall be considered as not having paid the annual contributions to the Resolution Fund, if the bank has failed to pay such contributions within 45 calendar days from the time limit set out in point 3, article 10, of this Regulation.

**Article 20**

**Transitory provisions**

1. The Bank of Albania shall calculate the annual contribution for the first year of completion of the fund and notify banks accordingly, by 15 November 2017.
2. The calculation of the target level, the annual level of the Resolution Fund and the annual contribution for each bank, for the first year of the completion of the fund, are based on the financial statements for 2016.
3. Except for point 3, article 10, of this Regulation, the payment of the annual contribution for the first year of the completion of the fund shall be done in two instalments, as follows:
4. 10% of the annual contribution for the first year shall be paid within January 10, 2018;
5. the remaining part of the annual contribution shall be paid within April 30, 2018.

**Chairman of the Supervisory Council**

**Gent Sejko**