

Pursuant to Article 35, paragraph 1.1 of the Law No. 03/L-209 of the Central Bank of the Republic of Kosovo (Official Gazette of the Republic of Kosovo, No. 77/16 August 2010), and Articles 18 and 85 of the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (Official Gazette of the Republic of Kosovo, No. 11/11 May 2012), the Board of the Central Bank of the Republic of Kosovo at the meeting held on November 29, 2012, approved the following:

REGULATION ON CHANGES IN CAPITAL ACCOUNTS

Article 1 Purpose and Scope

1. The purpose of this Regulation is to indicate the types of transactions affecting banks' capital accounts which require CBK approval, however no transaction will be approved, which may result in a reduction of banks paid in capital under the minimal level required with Article 15 of the Law on Banks.
2. The provisions of this Regulation apply to all banks licensed by the CBK to operate in the Republic of Kosovo, excluding branches of foreign banks.

Article 2 Definitions

All terms used in this Regulation are as defined in Article 3 of the Law No.04/L-093 on Banks, Micro-finance Institutions and Non-Bank Financial Institutions (hereafter: *the Law on Banks*), and /or as further defined herein for purpose of this Regulation:

- a) *Bank* - means a Shareholder Company engaged in the business of banking, including a subsidiary, licenced by the CBK.
- b) *Branch of foreign bank* - means a person that is organized, has its head office and holds a licence to engage in the business of banking in a jurisdiction other than the Republic of Kosovo.

Article 3 Transactions Requiring Prior CBK approval

1. Certain changes in a bank's equity capital accounts require the CBK's review and approval before they are made. Banks shall first request and receive CBK approval prior to these changes, after which they shall notify the CBK when the change is made and that it complies with regulatory requirements. Upon receipt of the notification, the CBK certifies or authorizes the change, as appropriate, provided it is in compliance with applicable regulations. The change is effective upon CBK certification or authorization. These changes include:

- a) Sale of share capital for consideration other than cash;
- b) Reduction in share capital through a distribution of cash or assets.
- c) Payment of share dividend,
- d) Property dividends (dividends-in-kind).

2. No transaction will be approved that could result in a bank's paid-in capital failing to meet the minimum level required by Article 15 of the Law on Banks.

Article 4 **Changes Requiring Only CBK Certification or Authorization**

1. The CBK will approve certain changes in capital provided they comply with regulatory requirements. These changes do not require prior CBK approval. The bank should notify the CBK of the change and certifies that it complies with regulatory requirements. If it does so, the CBK certifies or authorizes the change upon receipt of the notification, making it effective. These changes include:

- a) Sale of share capital for cash.
- b) Restructuring to change the par value of capital shares where the change in the capital share account is offset by an equal change in the share capital reserve account.

Article 5 **Changes Not Requiring CBK Approval, Certification, or Authorization**

1. Certain changes in capital do not require CBK approval, although they may be subject to other regulatory requirements. Those changes are effective upon shareholder approval of the change and notification of the CBK of the change and include:

- a) A change in the amount of authorized, but unissued share capital.
- b) A share split that does not change the amount in the share capital account.

Article 6 **General Policies**

1. The CBK will approve changes in capital that comply with applicable regulations upon receipt of the required information from banks. That information gives advance notice of the type and amount of the proposed change. For banks in satisfactory condition, approval generally will be granted unless the proposed capital structure is not considered adequate under CBK Regulations, Rules, or Policies. For banks in unsatisfactory condition, the change in capital may be denied or approved conditionally at the CBK's discretion for reasons of bank safety and soundness and any other supervisory concerns. Specifically, approval of a change in capital may be withheld for banks that:

- a) Fail to comply with a capital plan submitted to the CBK.
- b) Propose a capital structure that the CBK considers inadequate.
- c) Violate regulations.
- d) Exhibit conditions that threaten safety and soundness.
- e) Fail to provide adequate information.

Article 7
Requirements for Specific Changes in Equity Capital

1. Sale of Share Capital for Cash

Shareholders must approve any increase in authorized but unissued share capital in accordance with the requirements of Article 24 of Law on Banks and relevant provisions of the Law on Business Organizations. Upon sale of the shares, the bank shall notify the CBK and certify that the change in share capital meets regulatory requirements. Upon receipt of the notification, the CBK certifies the increase in share capital, provided it is in compliance with regulatory requirements.

2. Sale of Share Capital for Property

Shareholders must approve any necessary increase in authorized, but unissued shares in accordance with the requirements of Article 24 of Law on Banks and relevant provisions of the Law on Business Organizations. The bank must submit to the CBK a letter of intent to change share capital and receive CBK approval prior to making the change. Sufficient information applicable to the transaction and as specified by the CBK must be provided to the CBK for evaluation and analysis of the proposed transaction. Upon approval of the proposed transaction by the CBK and upon sale of the shares, the bank must notify the CBK and certify that the change in share capital meets regulatory requirements. Upon receipt of the notification, the CBK will certify the increase in share capital, provided it meets regulatory requirements.

3. Reduction in Share Capital or Reserves by Distributing Cash or Assets

Shareholders must approve any reduction in share capital in accordance with the requirements of Article 24 of the Law on Banks and relevant provisions of the Law on Business Organizations. Shareholders also must approve any related distribution of cash or assets. The bank must submit to the CBK a letter of intent to change share capital and receive its approval prior to reducing share capital or share capital reserves. Upon completion of the reduction, the bank must notify the CBK and certify that the change in share capital meets regulatory requirements. Upon receipt of the notification, the CBK authorizes the reduction in share capital, provided it meets regulatory requirements.

4. Reduction in Share Capital by Transfer to Reserves

- a) Transfers from "excess reserves" - A bank can transfer excess reserves from reserves to profits available for payment of dividends. The bank can transfer that excess, only if it is earned, i.e., if it came from earnings of prior periods and not from paid in share capital reserves or transfers to record a share dividend.
- b) Shareholder approval is not required for the change from sub-paragraph a) of this paragraph, but bank's Board of Directors must approve the transfer. The bank must submit a letter of intent to the CBK and receive its approval prior to making the change.

5. Dividends-in-Kind

A bank may declare dividends payable in property with CBK approval. Before the dividend is declared, the property must be written up or down to reflect its current market value. Any write-up or write-down should be recorded in the income statement as if the property had been disposed of in a sale. The dividend should be recorded at an amount equal to the current value of the property. The bank must request and receive CBK approval prior to payment of the dividend.

6. Dividends Requiring Approval

CBK approval is also required if the total of all dividends declared by a bank in any calendar year exceeds net profits of that year plus retained net profits of the preceding two years, less any required transfers to reserves. The bank must request and receive CBK approval prior to payment of the dividend.

7. Share Split

- a) A share split typically increases the number of shares outstanding and reduces the market price of each. The usual share split involves reducing the par value of the shares while increasing the number of shares issued. For example, 100,000 shares of euro 10 par value shares might split 2 for 1, which would result in 200,000 shares of euro 5 par value shares. Shareholders must approve an amendment to the bank's by-laws to change the par value of the shares. No CBK approval is required since the amount in the share capital account does not change.
- b) A share split can also be affected by declaring a share dividend. Share dividends exceeding 20 percent of issued shares are classed as share splits and accounted for by transferring to share capital an amount not less than the par value of the additional shares issued. Such dividends are considered a realignment of capital accounts according to accepted accounting principles and are not subject to restrictions. Shareholders must approve any increase in authorized, but unissued shares in accordance with Article 24 of the Law on Banks, and relevant provisions of Law on Business Organizations. Upon payment of the dividend, the bank must notify the CBK and certify that the change meets regulatory requirements. Upon receipt of the notification, the CBK certifies the increase in share capital, provided it meets regulatory requirements.

8. Reverse Share Split

CBK does not permit a reverse share split that has the effect of eliminating minority shareholders.

9. Share Dividends

- a) A share dividend is an issuance of shares that evidence current owners' share of accumulated earnings. Share dividends are accounted for by transferring an amount equal to the fair value of the additional shares issued from undivided profits to a category of permanent capitalization (equity capital and reserves). The amount transferred from undivided profits shall not be less than the par value of the additional shares being issued.

- b) Shareholders shall approve any necessary increase in authorized but unissued shares in accordance with the requirements of Article 24 of Law on Banks and relevant provisions of the Law on Business Organizations. Upon payment of the dividend, the bank must notify the CBK and certify that the change meets regulatory requirements. Upon receipt of the notification, the CBK certifies the increase in capital, provided it meets regulatory requirements.

10. Changes in Par Value of Share Capital

Shareholders must approve an amendment to the banks by-laws to change the par value of capital shares in accordance with the requirements of Article 24 of the Law on Banks and relevant provisions of the Law on Business Organizations. Shareholders must also approve any reduction in capital shares. Changes that are strictly an internal restructuring of capital do not require prior CBK approval. (An internal restructuring of capital means changes in par value of capital shares when the change in the share capital account is offset by an equal change in the share capital reserve account.) Upon completion of the change, the bank must notify the CBK and certify that the change meets regulatory requirements. Upon receipt of the notification, the CBK certifies the change, if it results in an increase in the share capital account or authorizes this change, if it results in a decrease in the share capital account and this decrease meets regulatory requirements.

Article 8 **Procedures for the Above Requirements**

1. For those changes requiring prior CBK approval, the bank should submit a letter of intent to change share capital. The letter describes the proposed change in capital and explains the reason for it. The CBK will review the change to determine that:

- a) It conforms to the terms of any capital adequacy agreement.
- b) Proposed issues can be considered capital under the definitions adopted by the CBK.
- c) The change complies with regulations, instructions and supervisory concerns.

2. A bank may consider the proposed change approved 30 days after the CBK receives the letter of intent, unless it is notified by the CBK that approval is delayed, conditioned, or denied. If the CBK agrees with the change, it will approve the transaction and advise the applicant of any additional steps, including a letter of notification, required to effect the change.

3. Upon completion of any capital change requiring CBK certification or authorization, the bank should notify the CBK by letter that the change has been made and that it complies with regulatory requirements. A bank may consider the change certified or authorized 30 days after the CBK receives the notification, unless otherwise advised. The CBK will certify or authorize those changes in capital upon receipt of the letter, provided the changes meet regulatory requirements.

4. Approved changes in share capital must be completed within one year of preliminary approval.

Article 9
Enforcement, Remedial Measures and Civil Penalties

Any violation of this Regulation shall be subject to the remedial measures and penalties provided for in Articles 58, 59 and 82 of the Law on Banks.

Article 10
Abrogation

Upon the entry into force of this Regulation, it shall abrogate the Amended Rule XXI of CBK on Increase in Minimum Capital of Banks amended on June 25, 2004 and November 30, 2005 and Rule XXII of CBK on Changes in Bank Equity Capital Accounts adopted on March 28, 2002, and any other provisions that may be in conflict with this Regulation.

Article 11
Entry into Force

This Regulation shall enter into force on December 03, 2012.

The Chairman of the Board of Central Bank of the Republic of Kosovo

Sejdi Rexhepi