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Pursuant to Article 9 and the fourth paragraph of Article 129 of the Banking Act (Official Gazette of the Republic of Slovenia, Nos. 25/15, 44/16 [ZRPPB], 77/16 [ZCKR], 41/17, 77/18 [ZTFI-1], 22/19 [ZIUDSOL] and 44/19 [constitutional court decision]; hereinafter: the ZBan-2) and the first paragraph of Article 23 and the first paragraph of Article 31 of the Bank of Slovenia Act (Official Gazette of the Republic of Slovenia, Nos. 72/06 [official consolidated version], 59/11 and 55/17), and in connection with Recital (75) and Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 of 27 June 2013, p 1; hereinafter: Regulation (EU) No 575/2013), the Governing Board of the Bank of Slovenia hereby issues the following

**REGULATION**

**on the documentation for the granting of an authorisation to include a capital instrument in the calculation of the own funds of banks and savings banks and the documentation on subsequent issuances of instruments**

**1. GENERAL PROVISIONS**

**Article 1  
(content of regulation)**

- (1) This regulation sets out:
- (a) the detailed content of the documentation that a bank or savings bank (hereinafter: bank) shall enclose in:
    - (i) a request for the granting of the authorisation referred to in the second paragraph of Article 129 of the ZBan-2 or the permission referred to in Article 26(3) of Regulation (EU) No 575/2013 to include a capital instrument in the calculation of the bank's own funds;
    - (ii) the notification for subsequent issuances of forms of Common Equity Tier 1 instruments referred to in the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013;
  - (b) the deadline for submitting the notification for subsequent issuances of forms of Common Equity Tier 1 instruments before their classification as Common Equity Tier 1 instruments in accordance with the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013.
- (2) Wherever this regulation makes reference to the provisions of other regulations, these provisions shall apply in their wording applicable at the time in question.

**Article 2  
(definition of terms)**

The terms used in this regulation shall have the same meanings as in the ZBan-2 and Regulation (EU) No 575/2013, and regulations issued on their basis.

**2. DOCUMENTATION FOR GRANTING OF AUTHORISATION TO INCLUDE  
CAPITAL INSTRUMENT IN CALCULATION OF OWN FUNDS**

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**Article 3  
(general)**

(1) In accordance with the first subparagraph of Article 26(3) of Regulation (EU) No 575/2013 or the second paragraph of Article 129 of the ZBan-2, a bank shall obtain the prior authorisation of the competent authority for the inclusion of a capital instrument in the calculation of own funds, having regard for the procedure for making a decision on the granting of authorisations set out in Section 12.2 of the ZBan-2, unless explicitly stipulated otherwise by Regulation (EU) No 575/2013 or another regulation.

(2) The bank shall enclose the information set out in Article 4 of this regulation in the request for the granting of an authorisation to include a capital instrument in the calculation of own funds.

(3) A bank that is classed as a less significant credit institution in accordance with Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287 of 29 October 2013, p 63) shall act in accordance with Section 3 of this regulation in connection with subsequent issuances of forms of Common Equity Tier 1 instruments in accordance with the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013.

**Article 4  
(content of request for granting of authorisation)**

(1) The request for the granting of an authorisation to include a capital instrument in the calculation of own funds referred to in the second paragraph of Article 3 of this regulation shall contain the following:

- (a) the basic documentation (contract, prospectus or other) related to the issuance of the capital instrument;
- (b) the amount and date of the planned issuance of the capital instrument for inclusion in the calculation of own funds, the impact on capital ratios set out in Article 92 of Regulation (EU) No 575/2013, and a description of the purpose of the bank's recapitalisation;
- (c) an indication of the category of own funds and the level of inclusion of the capital instrument (individual and/or consolidated basis);
- (d) an indication of the holder of the capital instrument where known, or an indication of the potential holder or types of potential holders (e.g. institutional investors) of the specific capital instrument;
- (e) a summary of the main features of the capital instrument on the basis of the prescribed template set out in Annex II of Commission Implementing Regulation (EU) No 1423/2013 of 20 December 2013 laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 355 of 31 December 2013);
- (f) an illustration that the conditions set out in Articles 28, 52 or 63 of Regulation (EU) No 575/2013 have been met, including the relevant conditions set out in regulatory and implementing technical standards or other regulations referred to in Article 9 of the ZBan-2;
- (g) a description of the accounting treatment of the specific capital instrument, together with an auditor's opinion of its eligibility;
- (h) the calculation of the bank's own funds and capital requirements, including capital buffers, as at the final day of the month before the request for the granting of the authorisation was filed, including the amount and composition of own funds by individual categories and elements, unless the bank has already submitted the information in question to the competent authority for the aforementioned date;

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- (i) a projection of the calculation of the bank's own funds and capital requirements, including capital buffers, for the period of the next three years, and its business strategy, including a projection of the statement of financial position, the income statement and the statement of comprehensive income as defined in the Regulation on the books of account and annual reports of banks and savings banks (Official Gazette of the Republic of Slovenia, Nos. 69/17, 73/19 and 164/20);
  - (j) the consent of the bank's management and supervisory bodies with regard to the issuance of the capital instrument;
  - (k) the provisions of the articles of association and restrictions with regard to the issuance of the capital instrument;
  - (l) a brief substantive and timing description of the additional authorisations and consents that the bank must obtain in connection with the issuance of the specific capital instrument on the basis of the legislation governing the market in financial instruments;
  - (m) other facts and circumstances that could have an impact on the fulfilment of the conditions for obtaining the authorisation to include the capital instrument in the calculation of the bank's own funds;
  - (n) a declaration by the bank's management body that the bank did not and will not directly or indirectly fund the acquisition of ownership of the capital instrument, and/or the submission of other evidence of the holders' funding of the acquisition of ownership of capital instruments for the purposes of the requirements under point (b) of Article 28(1), point (c) of Article 52(1) and point (c) of Article 63 of Regulation (EU) No 575/2013;
  - (o) a declaration by the bank's management body that in connection with the capital instrument there are no additional contracts, agreements or arrangements that could affect or cause the capital instrument to not meet the conditions or alter the economic effects of the instrument, as stipulated in Article 79a of Regulation (EU) No 575/2013.
- (2) For the inclusion of an Additional Tier 1 instrument in the calculation of own funds, the request for the granting of an authorisation referred to in the second paragraph of Article 3 of this regulation shall contain the following in addition to the information referred to in the first paragraph of this article:
- (a) detailed analysis of the expected amount of Common equity Tier 1 items that would be generated if the principal amount of the Additional Tier 1 instruments were fully written down or converted as stipulated in Article 54(3) of Regulation (EU) No 575/2013, having regard for all foreseeable charges related to the instruments at the time of their write-down or conversion;
  - (b) detailed analysis of the write-up of the Additional Tier 1 instrument following the temporary write-down of the principal as stipulated in point (e) of Article 21(2) of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds requirements for institutions (OJ L 74 of 14 March 2014, p 8);
  - (c) where the Additional Tier 1 instruments have been issued by a subsidiary undertaking established in a third country and for which the trigger level is calculated in accordance with the national law of that third country, a submission of an independent external legal opinion confirming that the legislation of the third country and the contractual provisions governing the instruments are at least equivalent to the requirements set out in Article 54 of Regulation (EU) No 575/2013, as stipulated by point (e) of Article 54(1) of Regulation (EU) No 575/2013.
- (3) The bank shall submit the information referred to in the first and second paragraphs of this article on an individual and/or consolidated basis depending on the level of inclusion of the specific capital instrument in the calculation of own funds. Should the bank intend to include the specific capital instrument in the calculation of own funds on a consolidated basis, the provisions of the first and second paragraphs of this article shall apply *mutatis mutandis* to the submission of information.

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(4) The bank shall submit the information referred to in point (f) of the first paragraph of this article on the following forms, which are an integral part of this regulation:

- (a) the CET1 form for Common Equity Tier 1 instruments;
- (b) the AT1 form for Additional Tier 1 instruments;
- (c) the T2 form for Tier 2 instruments.

(5) In addition to the documentation and information referred to in the first and second paragraphs of this article, the Bank of Slovenia may request additional information for the purposes of checking that the prescribed conditions for granting the authorisation to include a capital instrument in the bank's own funds calculation have been met.

(6) Within the framework of the procedure for making a decision on the request for the granting of the authorisation to include the capital instrument in the calculation of capital, the bank shall without delay send the competent authority any changes, additions or updates to the information, should there be changes or additions to the originally submitted information referred to in the first and second paragraphs of this article.

(7) When the procedure for making a decision on the request for the granting of the authorisation to include the capital instrument in the calculation of own funds is being conducted on the basis of a draft of the basic documentation referred to in point (a) of the first paragraph of this article, the bank shall submit the final version within five business days of its conclusion or entry into force. At the same time it shall submit a declaration by the bank's management body that the final version of the basic documentation referred to in point (a) of the first paragraph of this article does not differ from the originally submitted draft based on which the competent authority took the decision in the form of a granted authorisation to include the capital instrument in the calculation of capital, or in which it explains any differences from the originally submitted draft.

(8) Notwithstanding whether the bank has obtained the competent authority's authorisation to include a capital instrument in the calculation of own funds pursuant to the second paragraph of Article 129 of the ZBan-2, the competent authority may request that the bank amend or supplement individual provisions of the basic documentation referred to in point (a) of the first paragraph of this article should deviations from the required conditions for the bank's specific capital instrument be found in a subsequent procedure to review the quality of the bank's own funds instrument by the European Banking Authority pursuant to Article 80 of Regulation (EU) No 575/2013. After complying, the bank shall without delay submit evidence that the required conditions under point (f) of the first paragraph of Article 4 of this regulation have been met in the form of the prescribed form referred to in the fourth paragraph of this article.

### **3. DOCUMENTATION FOR SUBSEQUENT ISSUANCES OF FORMS OF COMMON EQUITY TIER 1 INSTRUMENTS AND DEADLINE FOR SUBMITTING NOTIFICATION**

#### **Article 5**

##### **(documentation for subsequent issuances of forms of Common Equity Tier 1 instruments)**

(1) For the purpose of assessing whether the conditions referred to in point (a) of the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013 have been met in connection with the equivalence of the provisions governing previous and subsequent issuances of forms of Common Equity Tier 1 instruments, the bank shall submit the following documentation to the Bank of Slovenia:

- (a) a declaration by the bank's management body that from the perspective of meeting the conditions under Article 28 of Regulation (EU) No 575/2013 and relevant regulations issued on

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its basis, there have been no changes to the content of the provisions governing subsequent issuances of forms of Common Equity Tier 1 instruments compared with the provisions governing previous issuances for which the bank received permission in accordance with Regulation (EU) No 575/2013;

(b) a declaration by the bank's management body that the bank did not and will not directly or indirectly fund the acquisition of ownership of the capital instrument, and/or the submission of other evidence of the holders' funding of the acquisition of ownership of capital instruments for the purposes of the requirement under point (b) of Article 28(1) of Regulation (EU) No 575/2013;

(c) a declaration by the bank's management body that in connection with the capital instrument there are no additional contracts, agreements or arrangements that could affect or cause the capital instrument to not meet the conditions or alter the economic effects of the instrument, as stipulated in Article 79a of Regulation (EU) No 575/2013;

(d) evidence that the instrument is fully paid up;

(e) a description of the changes to the provisions governing subsequent issuances of forms of Common Equity Tier 1 instruments compared with the provisions governing previous issuances, and a self-assessment of these changes from the perspective of meeting the conditions under Article 28 of Regulation (EU) No 575/2013 and relevant regulations issued on its basis;

(f) a comparison between the wordings of the provisions governing subsequent and previous issuances of forms of Common Equity Tier 1 instruments in a form that makes the changes evident.

(2) For the purpose of the condition referred to in point (a) of the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013, the provisions governing subsequent and previous issuances of forms of Common Equity Tier 1 instruments shall be deemed substantially the same if in the subsequent issuance there are no changes to the provisions relative to previous issuance that could affect the meeting of the conditions for Common Equity Tier 1 instruments.

(3) In addition to the documents referred to in the first paragraph of this article, for subsequent issuances of forms of Common Equity Tier 1 instruments the bank shall submit to the Bank of Slovenia information about the amount and date of the issuance, an indication of the holders of Common Equity Tier 1 instruments, and a description of the purpose of recapitalisation.

(4) In addition to the documentation referred to in the first paragraph of this article, the Bank of Slovenia may request that the bank submit additional information for the purposes of checking that the conditions referred to in point (a) of the third subparagraph of Article 26(3) of Regulation (EU) No 575/2013 have been met.

### **Article 6**

#### **(deadline for submitting notification for subsequent issuances of forms of Common Equity Tier 1 instruments)**

(1) For the purposes of point (b) of the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013 in connection with the timely official notification of the competent authority with regard to the subsequent issuance of forms of Common Equity Tier 1 instruments, the bank shall submit all of the documentation referred to in Article 5 of this regulation to the Bank of Slovenia at least 20 days before the date of the envisaged classification of the instruments as Common Equity Tier 1 instruments.

(2) Should the Bank of Slovenia determine that the subsequent issuance of forms of Common Equity Tier 1 instruments does not meet the conditions set out in Article 26(3) of Regulation (EU) No

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575/2013, it shall notify the bank in writing accordingly by the deadline referred to in the previous paragraph.

(3) Should the bank not receive the written notification from the Bank of Slovenia referred to in the second paragraph of this article about the failure to meet the condition set out in point (a) of the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013 within 20 days of submitting the documentation referred to in Article 5 of this regulation, it may classify the instrument as a Common Equity Tier 1 instrument.

**4. TRANSITIONAL PROVISION**

**Article 7  
(pending procedures)**

Procedures for granting an authorisation to include a capital instrument in the calculation of own funds initiated before the entry into force of this regulation shall be completed according to the Regulation on the documentation for the granting of an authorisation to include a capital instrument in the calculation of the own funds of banks and savings banks (Official Gazette of the Republic of Slovenia, No. 50/15), having regard for the documentation submitted.

**5. FINAL PROVISIONS**

**Article 8  
(cessation of validity)**

On the day that this regulation enters into force, the Regulation on the documentation for the granting of an authorisation to include a capital instrument in the calculation of the own funds of banks and savings banks (Official Gazette of the Republic of Slovenia, No. 50/15) shall cease to be in force.

**Article 9  
(entry into force)**

This regulation shall enter into force on the day after its publication in the Official Gazette of the Republic of Slovenia.

Ljubljana, 9 February 2021

Dr Primož Dolenc  
Deputy-President,  
Governing Board of the Bank of Slovenia