RESOLUTION AND COMPULSORY WINDING-UP OF BANKS ACT (ZRPPB-1)

CHAPTER 1: COMMON PROVISIONS

1.1 Content of the Act

Article 1

(Subject of Act)

(1) This Act shall regulate the following:

1. the competences of and procedures conducted by Banka Slovenije in exercising the powers and performing the tasks of the bank resolution authority;

2. the planning of bank resolution;

3. resolution proceedings and powers in connection with the application of resolution tools;

4. proceedings for the compulsory winding-up of a bank.

(2) This Act also determines the mechanism for the collection and transfer of *ex-ante* and extraordinary *ex-post* contributions of banks established in the Republic of Slovenia into the Single Resolution Fund established in accordance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1) last amended by a Corrigendum (OJ L 154, 12.6.2019, p. 48) (hereinafter: Regulation 806/2014/EU), and the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund (Official Gazette of the Republic of Slovenia [International Treaties], Nos. 13/15 and 15/15 [corrigendum]; hereinafter: the Transfer Agreement).

(3) This Act shall not apply to SID – Slovenska izvozna in razvojna banka, d.d., Ljubljana, which was established as an authorised specialised Slovenian bank for the promotion of export and development under the law governing the Slovene Export and Development Bank.

Article 2

(Scope of application of Act)

(1) In accordance with this Act and Regulation 806/2014/EU, resolution proceedings and actions shall be applied in relation to the following entities established or incorporated in the Republic of Slovenia:

1. a bank;

2. a financial institution that is a subsidiary of a credit institution, financial holding company, mixed financial holding company or mixed-activity holding company established in a Member State and that is included in the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 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, 27.6.2013, p. 1), last amended by Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020 amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic (OJ L 204, 26.6.2020, p. 4), last amended by a Corrigendum (OJ L 335, 13.10.2020, p. 20) (hereinafter: Regulation 575/2013/EU);

3. a financial holding company, mixed financial holding company or mixed-activity holding company that is a subsidiary of a credit institution established in a Member State;

4. a financial holding company, mixed financial holding company or mixed-activity holding company that is a parent of a credit institution established in a Member State;

5. an EU branch in the Republic of Slovenia.

(2) In this Act the term "resolution entity" is used as a common term for the entities referred to in points 1 to 4 of the previous paragraph.

Article 3

(Transposition and implementation of EU legislation)

(1) By virtue of this Act the following are transposed into Slovenian law:

1. Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15), as last amended by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 on establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190), (hereinafter: Directive 2001/24/EC); and

2. Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 on establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190), last amended by Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29), last amended by a Corrigendum (OJ L 283, 31.8.2020, p. 2) (hereinafter: Directive 2014/59/EU).

(2) This Act shall regulate in detail the implementation of Regulation 806/2014/EU.

1.2 Definition of terms

Article 4

(Resolution and compulsory winding-up)

(1) Resolution shall mean the application of actions for the resolution of a resolution entity with the aim of achieving the objectives set out in Article 27 of this Act.

(2) The compulsory winding-up of a bank shall mean the compulsory liquidation or bankruptcy of a bank.

Article 5

(Other terms)

The terms used in this Act shall have the following meanings ascribed to them:

1. "alternative investment fund" shall mean an alternative investment fund as defined in the law governing investment funds and asset management companies;

2. "bank" shall mean a credit institution established in the Republic of Slovenia that has obtained an authorisation to provide banking services as a bank or savings bank in accordance with the law governing banking;

3. "central counterparty" shall mean a central counterparty as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1), last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ L 322, 12.12.2019, p. 1) (hereinafter: Regulation 648/2012/EU);

4. "cross-border group" shall mean a group including group entities established in more than one Member State;

5. "shareholder" shall mean a holder of shares or other instruments of ownership;

6. "business day" shall mean any day other than Saturdays, Sundays and national holidays that are work-free days in accordance with the legislation of the Member State concerned;

7. "netting arrangement" shall mean an arrangement that is part of the basic contract or is concluded as a framework arrangement for several basic contracts between two parties, including the arrangement on early termination as defined in the law governing financial collateral, and which includes the following rules:

* the rule that upon the occurrence of insolvency or another event that according to the arrangement constitutes a breach of the obligations of a contracting party, the contract is considered to be terminated or the contracting party not in breach of contract acquires the right to withdraw from the contract or all the obligations of the contracting parties become due and payable;
* the rule on calculating the netting, market, liquidation or replacement cash value of the mutual obligations of the contracting parties upon the termination of the contract or early maturity referred to in the previous indent;
* the rule on converting the amounts of mutual obligations referred to in the previous indent into a single currency when such amounts are expressed in different currencies;
* the rule that the mutual claims and obligations referred to in the second and third indents of this point are converted into or replaced by a single net claim;

8. "set-off arrangement" shall mean an arrangement under which two or more claims or obligations mutually owed by parties to the arrangement are set off against each other;

9. "title transfer financial collateral arrangement" shall mean an arrangement, including reverse repurchase agreements, under which a collateral provider transfers full title to or the exclusive right to financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations; such arrangement shall be subject to the rules applying to financial collateral agreements under the law governing financial collateral;

10. "Single Resolution Board" shall mean the resolution authority established under Regulation 806/2014/EU;

11. "EU parent undertaking" shall mean a parent credit institution established in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company;

12. "EU subsidiary" shall mean a credit institution established in a Member State that is a subsidiary of an institution or parent undertaking established in a third country;

13. "EU branch" shall mean a branch located in a Member State that is part of a third-country credit institution;

14. "financial institution" shall mean a financial institution as defined in Article (4)(1)(26) of Regulation (EU) No 575/2013, i.e. an undertaking that is not an institution and whose principal activity is to acquire holdings or to provide financial services set out in the law governing banking, including financial holding companies, mixed financial holding companies, the payment institutions set out in the law governing payment services and systems, and asset management companies, but excluding the insurance holding companies and mixed insurance holding companies referred to in the law governing the insurance industry;

15. "core business operations" shall mean business lines and associated services representing material sources of revenue, profit or franchise value for an institution or for a group of which an institution is a part;

16. "designated national macroprudential authority" is a Member State’s authority responsible for conducting macroprudential policy and supervision in that Member State in accordance with the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1), which in the Republic of Slovenia means the Financial Stability Board established pursuant to the law governing the macroprudential supervision of the financial system;

17. "institution" shall mean a credit institution or investment firm;

18. "institutional deposit protection scheme" shall mean a scheme that fulfils the requirements referred to in Article 113(7) of Regulation 575/2013/EU;

19. "Tier 2 instruments" shall mean capital instruments meeting the conditions referred to in Article 63 of Regulation 575/2013/EU;

20. "Additional Tier 1 instruments" shall mean capital instruments meeting the conditions referred to in Article 52(1) of Regulation 575/2013/EU;

21. "Common Equity Tier 1 capital" shall mean Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation 575/2013/EU;

22. "Common Equity Tier 1 instruments" shall mean capital instruments meeting the conditions referred to in Articles 28(1) to 28(4), Articles 29(1) to 29(5) or Article 31(1) of Regulation 575/2013/EU;

23. "investment firm" shall mean an investment firm as defined in Article 4(1)(22) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1), last amended by a Corrigendum (OJ L 20, 24.1.2020, p. 26), which is required to provide initial capital in the amount of EUR 750,000; in the territory of the Republic of Slovenia this shall mean an investment firm as defined in the first paragraph of Article 20 of Financial Instruments Market Act (Official Gazette of the Republic of Slovenia, Nos. 77/18, 17/19 [corrigendum] and 66/19);

24. "extraordinary public financial support" shall mean state aid in the sense of Article 107(1) of the Treaty on the Functioning of the European Union (consolidated version, OJ C 202, 7.6.2016, p. 47; hereinafter: the TFEU) or other fiscal support at the supranational level that would be deemed state aid if it was allocated at the national level, which is intended to maintain or restore the successful operations, liquidity or solvency of a bank or an individual financial undertaking in the group of which the bank is a part, or the entire group of which the bank is a part;

25. "emergency liquidity assistance" shall mean the provision of central bank money or any other assistance that may lead to an increase in central bank money to a solvent financial institution or a group of solvent financial institutions that is facing temporary liquidity problems, without such an operation being part of monetary policy;

26. "derivative" shall mean a derivative, as defined in Article 2(5) of Regulation 648/2012/EU;

27. "capital instruments" shall mean shares and other Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments;

28. "capital" shall mean a bank’s own funds, as defined in Article 4(118) of Regulation 575/2013/EU;

29. "undertaking for collective investment in transferable securities" shall mean an undertaking for collective investment in transferable securities as defined in the law governing investment funds and asset management companies;

30. "credit institution" shall mean a credit institution, as defined in Article 4(1)(1) of Regulation 575/2013/EU, except the entities referred to in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), last amended by a Corrigendum (OJ L 212, 3.7.2020, p. 20) (hereinafter: Directive 2013/36/EU);

31. "third-country credit institution" shall mean an entity established in a third country that would fulfil the conditions for being defined as a bank if it were established in the Republic of Slovenia;

32. "covered bond" shall mean a bond issued by a credit institution established in a Member State, including a municipal bond and a mortgage bond, in relation to which amounts deriving from the issue of the bond are invested in accordance with law in assets which, during the whole period of validity of the bond, are capable of covering the claims attached to the bonds and which, in the event of the failure of the issuer, would be used on a priority basis for the repayment of the principal and payment of the outstanding accrued interest;

33. "critical functions" shall mean activities, services or operations whose discontinuance is likely to lead, in one or more Member States, to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border operations of an institution or group, with particular regard to the substitutability of those activities, services or operations;

34. “bail-inable liabilities" shall mean liabilities and instruments that do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments of a resolution entity, and are not excluded from the scope of the bail-in tool on the basis of the second paragraph of Article 101 of this Act;

35. "eligible liabilities" shall mean:

* bail-inable liabilities that meet the conditions set out in Article 50 or the fifth paragraph of Article 58 of this Act, and
* Tier 2 instruments that meet the conditions set out in Article 72a(1)(b) of Regulation 575/2013/EU;

36. "subordinated eligible instruments" shall mean instruments that meet all conditions set out in Article 72a of Regulation 575/2013/EU, other than the conditions set out in Articles 72b(3) to 72b(5) of Regulation 575/2013/EU;

37. "instruments of ownership" shall mean shares, other instruments that confer company ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing holdings in shares or other instruments of ownership;

38. "mixed financial holding company" shall mean a mixed financial holding company as defined in Article 4(1)(21) of Regulation 575/2013/EU and a mixed financial holding company as referred to in the law governing financial conglomerates;

39. "micro, small and medium-sized enterprises" shall mean micro, small and medium-sized companies, as defined on the basis of annual turnover in the law governing companies;

40. "parent undertaking" shall mean a parent undertaking as defined in Article 4(1)(15)(a) of Regulation 575/2013/EU, i.e. a controlling company as defined in the law governing companies with regard to the compilation of a consolidated annual report of a parent undertaking;

41. "third-country parent undertaking" shall mean a parent undertaking, a parent financial holding company or a parent mixed financial holding company established in a third country;

42. "normal insolvency proceedings" shall mean proceedings for winding up an entity that are initiated in accordance with domestic legislation by administrative or judicial authorities for the joint account of all creditors and include the partial or full sale of the debtor’s assets, including proceedings concluded with a settlement or similar action, and the appointment of an administrator normally applicable to entities under domestic law, either specific to institutions or generally applicable to any natural or legal person in the country concerned, which in the Republic of Slovenia shall mean:

* proceedings for the compulsory winding-up of a bank in accordance with this Act;
* proceedings for preventive restructuring, compulsory composition, compulsory liquidation and bankruptcy that may be initiated against a company or individual in accordance with the law governing financial operations, insolvency proceedings and compulsory winding-up;

43. "EU state aid rules" shall mean the rules set out in Articles 107, 108 and 109 of the TFEU, and all EU acts, including guidelines, communications and notices drafted or adopted in accordance with Articles 108(4) or 109 of the TFEU;

44. "resolution authority" shall mean a Member State’s authority that is authorised and responsible for the application of resolution tools and the exercise of resolution powers in that Member State within the context defined in this Act and Regulation 806/2014/EU, including the Single Resolution Board when it exercises the powers and performs the tasks of the resolution authority, which in the Republic of Slovenia shall mean Banka Slovenije when it is exercising powers and tasks in connection with resolution pursuant to this Act;

45. "group-level resolution authority" shall mean a resolution authority in the Member State where the consolidating supervisor is located;

46. "third-country resolution authority" shall mean an authority of a third country that is authorised and responsible for the exercise of powers comparable to the application of resolution tools and the exercise of resolution powers as defined by this Act;

47. "regulated market" shall mean a regulated market as defined in the law governing the financial instruments market;

48. "subsidiary" shall mean a subsidiary as defined in Article 4(1)(16) of Regulation 575/2013/EU, i.e. a controlled company as defined in the law governing companies with regard to the compilation of a consolidated annual report of a parent undertaking, where the application of this Act to resolution groups referred to in the second indent of point 59 of this article includes credit institutions that are permanently linked to a central authority, the central authority itself and their subsidiaries, whereby account is taken of how groups of this type meet the minimum requirement for own funds and eligible liabilities;

49. "material subsidiary" shall mean a subsidiary referred to in Article 4(1)(135) of Regulation 575/2013/EU;

50. "third-country resolution proceedings" shall mean an action under the law of a third country to direct the resolution of a failing third-country credit institution or third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under this Act;

51. "termination right" shall mean the right to terminate a contract, the right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;

52. "recipient" shall mean the entity to which instruments of ownership, debt instruments, assets, rights or liabilities, or any combination thereof are transferred from an institution in resolution proceedings;

53. "competent ministry" shall mean the ministry responsible for finance in accordance with the law governing the Government of the Republic of Slovenia (hereinafter: the Government);

54. "group resolution" shall mean either the adoption of resolution actions at the level of a parent undertaking or credit institution under consolidated supervision or the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities with regard to group entities that meet the conditions for resolution;

55. "systemic crisis" shall mean a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy; all types of financial intermediaries, markets and infrastructure may be potentially systemically important under certain conditions;

56. "group" shall mean a parent undertaking and its subsidiaries;

57. "group entity" shall mean a legal person that is a part of the same group as the resolution entity;

58. "resolution entity" shall mean:

* a legal person established in a Member State that, in accordance with Article 43 of this Act, Banka Slovenije defines as an entity in connection with which a resolution action is defined in the resolution plan, or
* a bank that is not part of a group subject to supervision on a consolidated basis on the basis of the law governing banking and in connection with which a resolution action is defined in the resolution plan drawn up in accordance with Article 40 of this Act;

59. "resolution group" shall mean:

* a resolution entity and its subsidiaries that are not themselves resolution entities, subsidiaries of other resolution entities or entities established in a third country that are not included in the resolution group in accordance with the resolution plan, and their subsidiaries, or
* credit institutions that are permanently linked to a central authority, the central authority itself if at least one of these credit institutions or the central authority is a resolution entity, and their subsidiaries;

60 "secured liability" shall mean a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase or reverse repurchase transactions and other title transfer collateral arrangements.

Article 6

(Definition of terms as defined in other regulations)

(1) The terms "deposit guarantee scheme", "deposit guarantee authority", "deposit", "depositor", "eligible deposit" and "guaranteed deposit" shall have the same meaning as in the law governing the deposit guarantee scheme.

(2) Other terms used in this Act shall have the same meaning as in the law governing banking or Regulation 575/2013/EU, unless otherwise provided by this Act.

1.3 Powers and responsibility of Banka Slovenije and other authorities

Article 7

(Competences in resolution proceedings and resolution authority)

(1) In accordance with this Act and Regulation 806/2014/EU, Banka Slovenije shall perform tasks and exercise powers concerning resolution, except those tasks and powers for which the Single Resolution Board is responsible in accordance with Regulation 806/2014/EU.

(2) For the purposes of the previous paragraph, Banka Slovenije shall put in place appropriate internal organisation to ensure operational independence and prevent conflicts of interest in performing tasks and exercising powers concerning resolution, and in performing tasks and exercising powers concerning prudential supervision of banks on the basis of the law governing banking and Regulation 575/2013/EU. Operational independence shall be considered to be provided when it is ensured that reporting and the formulation of proposals are separate for decisions that Banka Slovenije adopts when acting as the resolution authority and those that it adopts when acting as the authority responsible for bank supervision.

(3) Notwithstanding the previous paragraph, Banka Slovenije shall ensure that organisational units performing the tasks and exercising powers concerning supervision and resolution, as well as persons performing particular tasks within these units, participate in the preparation, planning and implementation of decisions concerning resolution.

(4) Banka Slovenije shall adopt detailed internal rules on the organisation of its resolution function, and shall publish them on its website.

(5) If, in accordance with Regulation 806/2014/EU, the Single Resolution Board is responsible for the performance of particular tasks or the exercise of powers concerning the resolution of entities referred to in the first paragraph of Article 2 of this Act, Banka Slovenije, acting as the resolution authority, shall perform tasks and exercise powers concerning resolution pursuant to this Act when this is necessary to implement a decision of the Single Resolution Board in accordance with Article 29 of Regulation 806/2014/EU.

(6) In performing tasks and exercising powers concerning resolution, Banka Slovenije shall take into account the guidelines and general instructions for the performance of tasks and the exercise of powers concerning resolution issued by the Single Resolution Board in accordance with Article 31 of Regulation 806/2014/EU.

(7) If, in accordance with 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, 29.10.2013, p. 63; hereinafter: Regulation 1024/2013/EU), the European Central Bank is responsible for exercising individual powers and tasks with regard to prudential supervision of banks, Banka Slovenije, acting as the resolution authority, shall, when carrying out resolution pursuant to this Act and Regulation 806/2014/EU, take into account the views and findings of the European Central Bank regarding the prudential requirements and prudential supervision actions with regard to the bank concerned.

Article 8

(Competences in compulsory bank liquidation proceedings)

(1) Banka Slovenije shall be exclusively competent to decide on measures for compulsory liquidation of banks by applying the actions and exercising the powers provided by this Act.

(2) The competence referred to in the previous paragraph shall include the actions applied in compulsory bank liquidation proceedings to branches that the bank has established in other Member States or third countries, unless otherwise provided by this Act.

(3) Insolvency proceedings or compulsory winding-up proceedings pursuant to the law governing financial operations, insolvency proceedings and compulsory winding-up may not be initiated against a bank.

Article 9

(Exercise of powers and application of regulations)

(1) In exercising its tasks and powers pursuant to this Act, Banka Slovenije shall consider how its decisions might affect the stability of the financial systems of the Member States in which the bank or group subject to resolution operates, so as to minimise the negative effects on the financial stability and economic and social conditions in the Member States concerned.

(2) Banka Slovenije shall perform its tasks concerning resolution in accordance with this Act and Regulation 806/2014/EU, having regard for:

1. the regulatory and implementing technical standards adopted by the European Commission in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 334, 15.12.2010, p. 12), last amended by Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 334, 27.12.2019, p. 1; hereinafter: Regulation 2175/2019/EU) (hereinafter: Regulation 1093/2010/EU);

2. the guidelines, recommendations and other acts issued by the European Banking Authority in accordance with Article 16 of Regulation 1093/2010/EU;

3. warnings and recommendations issued by the European Systemic Risk Board in accordance with Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1), last amended by Regulation (EU) 2019/2176 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 334, 27.12.2019, p. 146) (hereinafter: Regulation 1092/2010/EU);

4. other applicable regulations and international standards and recommendations concerning the resolution and winding-up of credit institutions.

(3) Banka Slovenije shall autonomously and independently make decisions regarding the application of the guidelines or recommendations of the European Banking Authority referred to in the previous paragraph, and may refuse in whole or in part to apply specific guidelines or recommendations, provided that there are reasonable grounds for such a decision. Banka Slovenije shall publish its decisions on the application of guidelines or recommendations referred to in the previous paragraph in the Official Gazette of the Republic of Slovenia.

(4) In order to ensure uniform interpretation and application of the regulations referred to in the second paragraph of this article that determine the requirements for banks with regard to resolution, Banka Slovenije may issue guidelines containing general and detailed rules on the implementation of these regulations and contributing to the development of good practice.

(5) The guidelines referred to in the previous paragraph shall be published on the Banka Slovenije website.

Article 10

(Authorised persons of Banka Slovenije)

(1) Persons employed by Banka Slovenije shall perform individual tasks concerning resolution and compulsory winding-up that fall within the competence of Banka Slovenije on the basis of an employment contract and in accordance with Banka Slovenije’s bylaws.

(2) The Governor of Banka Slovenije may authorise a certified auditor or another person with appropriate professional qualifications who is not employed by Banka Slovenije, provided that this person is subject to the requirements concerning the protection of confidential information, to perform particular tasks concerning resolution or compulsory winding-up.

(3) If it is likely that confidential information would be disclosed in a public contract award procedure in which a certified auditor or another professionally qualified person is to be selected, which, in turn, would make the effective supervision or performance of tasks concerning resolution or compulsory winding-up impossible or considerably more difficult or would threaten the stability of the financial system of the Republic of Slovenia, thereby significantly jeopardising the interests of the state, Banka Slovenije shall conclude a contract directly with the service provider, taking into account Article 346(1)(a) of the TFEU. The contract award procedure referred to in the previous sentence shall be subject to the provisions of the law governing the public procurement procedure in the field of defence and security in the part determining the subject of the contract and the reporting of statistics on the contracts awarded in the previous year.

(4) In its annual report Banka Slovenije shall disclose aggregate information on contracts concluded pursuant to the second and third paragraphs of this article and on the total value of these contracts in an individual year.

Article 11

(Collection and processing of information)

(1) For the purpose of exercising its powers and tasks set out by this Act, Banka Slovenije shall be competent to collect and process information about all facts and circumstances, including personal data, obtained in connection with the exercise of its tasks and powers set out by this Act.

(2) Upon a reasoned request by Banka Slovenije, national authorities and holders of public authorisations shall be obliged to provide free of charge any data and information, including the personal data referred to in the previous paragraph, required by Banka Slovenije to exercise its tasks and powers pursuant to this Act.

(3) With regard to the information that it obtains from registers and records kept by the courts or other national authorities or holders of public authorisations, Banka Slovenije shall be exempt from the payment of court and administrative fees normally charged for the provision of such information.

(4) Banka Slovenije shall process personal data obtained in the exercise of tasks and powers set out by this Act in accordance with the regulations governing the protection of personal data and Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 12

(Reporting at Banka Slovenije’s request)

(1) At Banka Slovenije’s request, banks, other entities in the group to which the bank belongs and EU branches shall provide reports, information and documentation regarding the circumstances concerning the operations of the bank, a group entity or an EU branch that Banka Slovenije needs in order to exercise the powers and tasks concerning resolution and proceedings for the compulsory winding-up of a bank.

(2) Banka Slovenije may also request the reports, information and documentation referred to in the previous paragraph from the members of the management bodies of and persons employed by the bank, the group entity or the branch.

(3) Banka Slovenije may require any person whom it reasonably assesses as having at their disposal the information that it needs in connection with the exercise of powers and tasks concerning resolution and proceedings for the compulsory winding-up of a bank to submit the information free of charge.

(4) Banka Slovenije may require the persons referred to in the first, second and third paragraphs of this article to provide information and written reports within a deadline period of no less than three business days from the date of receipt of the request.

Article 13

(Inspection)

(1) For the purpose of performing the tasks and exercising the powers pursuant to this Act, including for the purpose of obtaining and verifying the information and reports referred to in the previous article, Banka Slovenije may conduct an inspection of the entities referred to in the first paragraph of Article 2 of this Act, including the inspection of computerised books of account and records.

(2) The provisions of the law governing banking on inspections and the inspection of a bank’s computerised books of account and records shall apply *mutatis mutandis* to the inspection referred to in the previous paragraph.

Article 14

(Annual fee in relation to resolution and compulsory winding-up)

(1) Banks and EU branches established in the Republic of Slovenia shall pay to Banka Slovenije an annual fee in connection with the powers and tasks concerning resolution and compulsory winding-up exercised by Banka Slovenije pursuant to this Act and Regulation 806/2014/EU.

(2) The fee referred to in the previous paragraph shall be set by Banka Slovenije at such an amount that the total of all fees to be paid by banks and EU branches in a particular year does not exceed the actual costs incurred by Banka Slovenije with regard to the performance of its tasks pursuant to this Act. The costs incurred in the preparation and implementation of resolution actions and compulsory winding-up actions with regard to a particular resolution entity shall be excluded from the costs referred to in the previous paragraph.

(3) Banks and EU branches shall pay the annual fee referred to in the first paragraph of this article calculated on the basis of the previous paragraph in a one-off amount. Banka Slovenije shall issue an invoice by 31 March of the current year for the previous year’s fee.

(4) Via implementing regulations Banka Slovenije may lay down more detailed rules on:

1. the definition of the actual costs taken into account in determining the fee referred to in the first paragraph of this article;

2. the determination of the proportionate part of the annual fee to be paid by a particular bank or EU branch in accordance with the previous paragraph.

Article 15

(Reimbursement of costs incurred by Banka Slovenije with regard to resolution and compulsory winding-up)

(1) Banka Slovenije shall request the resolution entity to reimburse all the costs incurred in the implementation of resolution actions with regard to this entity and the costs incurred in the implementation of actions for the compulsory winding-up of a bank.

(2) In determining the costs referred to in the previous paragraph, Banka Slovenije shall take into account the actual costs, including the costs of:

1. a valuation of the assets and liabilities of the resolution entity carried out by an independent expert;

2. the engagement of other independent experts who participate in the planning and implementation of resolution actions and compulsory winding-up actions, when special knowledge and experience is required for the performance of particular tasks;

3. remuneration for the work of a special manager, when appointed, or a liquidator;

4. the application of tools and the exercise of powers for the resolution and compulsory winding-up of a bank.

(3) As a rule, Banka Slovenije shall decide on the reimbursement of costs via a resolution, as soon as the amount of the costs is known. The resolution entity shall pay the costs within 15 days. At the proposal of the resolution entity, Banka Slovenije may allow the costs to be paid in no more than six instalments within one year of assessment.

(4) If the resolution entity fails to pay the assessed costs by the deadline referred to in the previous paragraph, Banka Slovenije shall recover them from the resolution entity:

1. as a deduction from any consideration paid by a purchaser or recipient to the bank under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

2. from the assets of the bank under resolution as a preferred creditor; or

3. from the assets of the bridge bank or asset management vehicle as a preferred creditor in the proceedings for the winding-up of the bridge bank or asset management vehicle.

Article 16

(Liability in connection with exercise of powers and tasks)

(1) Banka Slovenije and the persons who act on its behalf or under its authorisation in exercising powers and tasks on the basis of this Act or Regulation 806/2014/EU shall act in accordance with the diligence of a good expert.

(2) Banka Slovenije and other persons who act on its behalf or under its authorisation shall be deemed to have acted with due diligence in exercising their powers if, taking into account the facts and circumstances known to them at the time of their actions, they have justifiably assessed that the conditions for exercising powers in accordance with this Act have been met.

(3) Banka Slovenije shall be liable for any damage caused in relation to the actions of Banka Slovenije or of the persons who, in exercising the powers and tasks of Banka Slovenije, acted on the basis of an authorisation by Banka Slovenije, due to a breach of the obligations referred to in the first paragraph of this article. Banka Slovenije shall be liable for the actions of persons who, in exercising the powers of Banka Slovenije in accordance with this Act, acted on the basis of an authorisation by Banka Slovenije, in accordance with the rules governing the liability of employers for damage caused to third parties by employees during or in connection with their work. If damage is caused due to the actions of a person who was acting on behalf of Banka Slovenije or under its authorisation, the injured party may seek compensation for damage exclusively from Banka Slovenije, notwithstanding the provisions of other laws.

(4) If the damage caused in connection with the actions of persons who acted on the basis of an authorisation by Banka Slovenije is due to the wilful misconduct or gross negligence of persons who acted on the basis of an authorisation by Banka Slovenije, Banka Slovenije shall request from the person who acted on the basis of an authorisation by Banka Slovenije reimbursement of the amount paid under the rules governing the liability of employees for damage caused to third parties during or in connection with their work with the employer.

(5) Notwithstanding the provisions of the third paragraph of this article, Banka Slovenije shall not be liable for damage caused by its actions or the actions of a person acting on the basis of an authorisation by Banka Slovenije when such actions:

1. are the result of compliance with instructions that the Single Resolution Board addressed to Banka Slovenije in accordance with Regulation 806/2014/EU;

2. are part of the planning or implementation of resolution actions that the Single Resolution Board or a resolution authority of another Member State adopts within the scope of its competences, and the actions of Banka Slovenije are the result of compliance with the requirements of other resolution authorities under Article 269 of this Act or of its other obligations related to cooperation between authorities in accordance with this Act or Regulation 806/2014/EU.

Article 17

(Competences and powers of agency responsible for financial markets)

(1) The agency responsible for financial markets shall be competent for supervising the implementation of Article 51 of this Act.

(2) The provisions regarding the competences, powers and responsibilities in supervision conducted by the agency responsible for financial markets on the basis of the law governing the financial instruments market shall apply to the supervision referred to in the previous paragraph.

1.4 Protection of the confidentiality of information and cooperation with other authorities

Article 18

(Duty to protect confidentiality of information)

(1) For the implementation of this Act, confidential information is any information about the resolution entity or other persons involved in resolution that Banka Slovenije obtains with regard to the exercise of powers and tasks pursuant to this Act from the resolution entity or other persons or produces for the purpose of performing tasks and exercising powers concerning the resolution or compulsory winding-up of banks.

(2) Unless otherwise provided by law, Banka Slovenije shall protect as confidential any information referred to in the previous paragraph, and shall not disclose it to any other person or government authority, except within the performance of tasks in accordance with law or in the form of a summary from which the individual bank to which such information relates cannot be identified.

(3) The duty to protect the confidentiality of information referred to in the first paragraph of this article shall also apply to persons receiving or producing this information in the performance of their professional tasks with regard to resolution or compulsory winding-up, in particular to:

1. the competent ministry when it performs resolution-related tasks;

2. special managers appointed in accordance with this Act and special authorised persons appointed in accordance with the law governing banking;

3. potential recipients invited to participate with regard to resolution or compulsory winding-up either in the resolution planning phase or in the preparations for the implementation of resolution actions or compulsory winding-up actions, regardless of whether this resulted in the actual participation of the recipient in the resolution or winding-up proceedings;

4. auditors, accountants, legal and other expert consultants, appraisers and other experts who directly or indirectly cooperate in resolution proceedings with Banka Slovenije, the competent ministry or the potential recipients referred to in the previous point;

5. a bridge bank and an asset management vehicle;

6. other persons who directly or indirectly, continuously or periodically provide or have provided services to Banka Slovenije, the competent ministry or the persons referred to in points 1 to 5 of this paragraph with regard to resolution;

7. members of the Governing Board of Banka Slovenije, and the senior management and employees of Banka Slovenije;

8. the senior management, members of the management body and employees of the persons referred to in points 1 to 7 of this paragraph during their employment and after termination of their employment;

9. the agency responsible for financial markets.

(4) The persons referred to in the previous paragraph may use the confidential information obtained during the performance of resolution-related tasks exclusively for purposes related to resolution and may not disclose it to any person or authority, except:

1. within the performance of tasks in accordance with this Act;

2. when the information is disclosed in the form of a summary from which the individual banks to which such confidential information relates cannot be identified;

3. with the explicit prior consent of Banka Slovenije, the bank concerned, the special management or temporary administrator, when appointed, or the competent ministry, when the information concerned falls within its area of work.

(5) Banka Slovenije shall also use confidential information for the following purposes:

1. to impose measures and to decide on the application of powers pursuant to this Act;

2. to impose penalties for breaches and to lodge a charge for a suspected criminal offence; and

3. in judicial review proceedings against decisions issued by Banka Slovenije, and in other judicial proceedings in connection with the performance of its tasks and the exercise of its powers on the basis of this Act or European Union regulations.

(6) The duty to protect confidential information referred to in this article shall also apply to information obtained by Banka Slovenije or the persons referred to in the third paragraph of this article as part of the exchange of information with other resolution authorities, including the Single Resolution Board, the European Banking Authority, the European Securities and Markets Authority, the European Systemic Risk Board, the supervisory authorities of the Republic of Slovenia or the competent authorities of other Member States, including the European Central Bank, whenever the latter is exercising the powers of the competent authority in accordance with Regulation 1024/2013/EU, and the authorities of Member States that manage deposit guarantee schemes.

Article 19

(Internal instructions on protection of confidential information and their application)

For the purpose of protecting confidential information in accordance with the previous article, Banka Slovenije, the competent ministry, the agency responsible for financial markets, and the management of an asset management vehicle and the management of a bridge bank, when they have been established in accordance with this Act, shall adopt internal instructions to ensure that confidential information is protected, which shall set out the exchange of such information, which may only occur between persons directly involved in resolution.

Article 20

(Provision of confidential information)

(1) The duty to protect confidential information shall not prevent the exchange of information between Banka Slovenije and the entities referred to in the third paragraph of Article 18 of this Act that participate in the performance of the tasks and the exercise of the powers of Banka Slovenije with regard to the resolution or compulsory winding-up of a bank.

(2) Notwithstanding the prohibition under the second paragraph of Article 18 of this Act, Banka Slovenije may also disclose confidential information to the following entities in the Republic of Slovenia, other Member States or the European Union in relation to the exercise of their powers and tasks:

1. resolution authorities, including the Single Resolution Board;

2. competent authorities, including the European Central Bank, when it is exercising the powers and tasks of the competent authority in accordance with Regulation 1024/2013/EU, and the authorities responsible for prudential supervision of financial sector entities and for the supervision of financial markets;

3. the ministry of a Member State that is responsible for economic, financial and budget decisions at the national level, when it performs tasks concerning resolution in accordance with that Member State’s legislation;

4. a central bank in the European System of Central Banks, the European Central Bank or another authority with similar tasks and powers to the central monetary authority, whenever this information is important for the performance of their legally prescribed tasks, including the pursuit of monetary policy and the associated provision of liquidity, the oversight of payments and the functioning of clearing systems and settlement systems, and ensuring the stability of the financial system;

5. entities or authorities that manage deposit guarantee schemes and investor compensation schemes, with respect to the information they require to perform their tasks concerning resolution;

6. judicial or administrative authorities responsible for normal insolvency proceedings in a Member State;

7. authorities responsible for maintaining the stability of the financial system in Member States by applying macroprudential rules;

8. authorities responsible for payment system supervision;

9. auditors carrying out auditing of the financial statements of credit institutions, investment firms, insurance undertakings and financial institutions;

10. the European Banking Authority to the extent required to exercise its powers and tasks in accordance with Regulation 1093/2010/EU, the European Systemic Risk Board, whenever such information is important for the performance of its tasks in accordance with Regulation 1092/2010/EU, the European Insurance and Occupational Pensions Authority, whenever such information is important for the performance of its tasks in accordance with Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48; hereinafter: Regulation 1094/2010/EU), and the European Securities and Markets Authority, whenever such information is important for the performance of its tasks in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84), last amended by Regulation 2175/2019/EU.

(3) In addition to the cases referred to in the previous paragraph, Banka Slovenije shall also disclose confidential information in the following cases:

1. at the request of a court, the state prosecutor’s office or the police in accordance with the regulations governing criminal and pre-trial proceedings;

2. at the request of a court:

* in judicial review proceedings against decisions issued by Banka Slovenije concerning resolution or compulsory winding-up pursuant to this Act: with regard to confidential information required to implement necessary actions in judicial review proceedings,
* in a bank’s bankruptcy proceedings: with regard to confidential information required to implement necessary actions in the bankruptcy proceedings and related civil proceedings,
* in judicial proceedings conducted with regard to the exercise of the powers and tasks of Banka Slovenije pursuant to this Act or European Union regulations,
* in any other judicial proceedings if such information is required for the court to reach a decision in the proceedings;

3. at the request of a commission of inquiry of the National Assembly or the Court of Audit, when, in accordance with the relevant Act, they are conducting supervision of actions and procedures concerning resolution.

(4) The entities referred to in the second and third paragraphs of this article and the persons who receive the information in relation to the tasks that they perform at the entity that received the information shall not disclose the confidential information received to third parties. The previous sentence shall not apply when the disclosure of confidential information is necessary for a court to reason its ruling.

(5) Notwithstanding the prohibition under the second paragraph of Article 18 of this Act, Banka Slovenije may also disclose confidential information to a third-country authority that in the third country exercises the powers and tasks of the resolution authority or the entity referred to in the second paragraph of this article, provided that all of the following conditions are met:

1. if the rules regarding the duty to protect confidential information that are comparable to the content of Articles 18 and 19 of this Act apply in this country to the authority concerned;

2. if the information concerned is necessary for the third-country resolution authority to perform its resolution functions under domestic law, which are comparable to the functions performed by Banka Slovenije pursuant to this Act; and

3. if the disclosure of confidential information that includes personal data complies with the regulations governing personal data protection.

(6) Entities that obtain confidential information pursuant to this article may only use such information to exercise their powers and tasks in accordance with regulations.

(7) Banka Slovenije and the competent ministry may only disclose confidential information that they received from a resolution authority of another Member State to a third-country resolution authority if:

1. the authority of the Member State allows the information to be disclosed to the third-country resolution authority; and

2. the information concerned is only disclosed for the purposes stated by the authority of the Member State.

(8) In the event of a breach of the duty to protect the confidentiality of information and its use contrary to the sixth paragraph of this article, the authorities and persons entitled to obtain confidential information in accordance with this article shall be liable for any direct damage caused by the unjustified disclosure or use of confidential information.

(9) The provisions of the law governing access to public information shall apply to requests submitted to Banka Slovenije pursuant to the law governing access to public information. In making its decision, the authority that decides in proceedings in connection with a request for access to public information shall also take account of the provisions of this Act that with regard to the sectoral legislation regulate individual issues that are not regulated by the law governing access to public information.

Article 21

(Impact assessment regarding disclosure of confidential information)

(1) With regard to the exchange of confidential information or a request for the provision of confidential information pursuant to the previous article, Banka Slovenije shall assess the possible negative impacts of such disclosure, particularly the impact of any disclosure of the content and details of a resolution plan or of the result of the resolvability assessment carried out pursuant to Article 30 of this Act.

(2) In the assessment referred to in the previous paragraph, Banka Slovenije shall determine, in particular, the importance of any disclosure of confidential information for:

1. the public interest, particularly in view of financial, monetary or economic policy;

2. the business interests of natural and legal persons;

3. the objective and purpose of a particular inspection, investigation or audit procedure in which confidential information is requested.

(3) Notwithstanding the previous article, Banka Slovenije shall refuse to disclose confidential information when it assesses on the basis of the assessment referred to in the first paragraph of this article and the factors referred to in the previous paragraph that the disclosure of certain information would have disproportionate negative impacts on the public interest or the resolvability of the resolution entity and that the negative impacts of disclosure, particularly the potential unauthorised use of this information, would exceed the negative impact of the non-disclosure of the information concerned.

(4) The previous paragraph shall not apply when the disclosure of confidential information is requested under the third paragraph of the previous article.

Article 22

(Banka Slovenije’s cooperation with agency responsible for financial markets)

(1) Banka Slovenije and the agency responsible for financial markets shall cooperate closely in the exercise of powers and tasks concerning resolution, and shall promote effective resolution planning and the implementation of resolution actions.

(2) Banka Slovenije and the agency responsible for financial markets shall strive to the greatest extent possible for the uniformity of practices concerning resolution planning and actions and, within this framework, for the comparability of methodological approaches.

(3) Having regard for Article 18 of this Act, Banka Slovenije and the agency responsible for financial markets shall, when requested, provide to each other any information that they may need to exercise their powers and tasks concerning the resolution or winding-up of institutions.

Article 23

(Cooperation between Banka Slovenije and competent ministry)

(1) Banka Slovenije shall provide the information on resolution actions that it receives under this Act to the competent ministry if the information concerns actions or decisions that could have an impact on public resources or with regard to which the notification of, the consent of or consultation with the competent ministry is required pursuant to law.

(2) Before applying resolution actions, Banka Slovenije shall notify the competent ministry thereof and, if the actions involve the use of additional public financial resources, it shall acquire the prior consent of the Government.

(3) In the event of systemic emergency situations, including the cases set out in Article 18 of Regulation 1093/2010/EU, or other unfavourable developments on the financial markets that could jeopardise the liquidity of the market or the stability of the financial system in the Republic of Slovenia, Banka Slovenije shall immediately notify the competent ministry if such disclosure is essential for effective supervision and implementation of resolution or compulsory winding-up actions.

Article 24

(Cooperation with authorities in other Member States and EU bodies)

(1) In deciding on the measures under this Act that could have an impact on one or more Member States, Banka Slovenije shall uphold the following rules:

1. it shall be ensured that decision-making is efficacious and the costs of resolution are kept as low as possible;

2. decisions and necessary actions shall be adopted and implemented in a timely manner and without delay;

3. there shall be mutual cooperation and cooperation with resolution authorities and other competent authorities of Member States with a view to ensuring that decisions are made and actions are taken in a coordinated and efficient manner;

4. it shall be ensured that the roles and responsibilities of authorities participating in decision-making pursuant to this Act are clearly defined;

5. due consideration shall be given to the interests of the Member States in which the EU parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution financing arrangements, deposit guarantee scheme or investor compensation scheme in these Member States;

6. due consideration shall be given to the interests of the Member States in which subsidiaries are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution financing arrangements, deposit guarantee scheme or investor compensation scheme in these Member States;

7. due consideration shall be given to the interests of the Member States in which significant branches are established, in particular the impact of any decision or action or inaction on the financial stability of these Member States;

8. due consideration shall be given to the objectives of balancing the interests of different Member States and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;

9. before taking a decision or action, Banka Slovenije shall consult the competent authority of the Member State, at least regarding those elements of the decision or action proposed that had or are likely to have an impact on:

* an EU parent undertaking, EU subsidiary or EU branch,
* the stability of the Member State in which an EU parent undertaking, EU subsidiary or EU branch is established or is located;

10. when adopting resolution actions, resolution authorities shall take into account and follow the adopted resolution plans, unless they assess, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by adopting actions that are not provided for in the resolution plan;

11. it shall be ensured that decision-making procedures are transparent if it is likely that the decision or action proposed would have implications for the financial stability, fiscal resources, resolution financing arrangements, deposit guarantee scheme or investor compensation scheme in these Member States;

12. coordination and cooperation are the best means of lowering the overall cost of resolution.

(2) In exercising its powers and tasks concerning resolution pursuant to this Act, Banka Slovenije shall cooperate with resolution authorities in other Member States and, at the request of a particular resolution authority, shall provide any information, including confidential information, having regard for Articles 18 and 20 of this Act, that this authority needs in order to perform tasks related to resolution.

(3) With regard to the request of a resolution authority of another Member State for Banka Slovenije to provide information that it received from a third-country resolution authority, Banka Slovenije shall only provide such information if the third-country resolution authority permits the information to be forwarded.

(4) In exercising its powers and tasks concerning resolution, Banka Slovenije shall participate in the resolution colleges referred to in Articles 164 and 165 of this Act. Within a college, Banka Slovenije, acting as the group-level competent authority, shall coordinate the flow of all significant information between resolution authorities responsible for the resolution of group entities and, in particular, shall promptly provide all relevant information to facilitate the performance of the college’s tasks.

(5) Banka Slovenije shall take part in the activities of the European Banking Authority and the European Systemic Risk Board.

(6) Banka Slovenije shall notify the Single Resolution Board, the European Commission, the European Banking Committee, the European Banking Authority, the European Central Bank and other EU bodies and institutions in accordance with EU regulations.

Article 25

(Cooperation with third-country authorities)

(1) This article shall apply to the regulation of relations with a third country with regard to cooperation in relation to resolution if no agreement under Article 93(1) of Directive 2014/59/EU has been concluded with the country concerned or if such an agreement exists but does not regulate the contents provided for in this article.

(2) Banka Slovenije may conclude bilateral or multilateral agreements on cooperation with relevant third-country resolution authorities. Banka Slovenije shall conclude agreements in particular in the following cases:

1. if a parent third-country institution has subsidiary banks or significant credit institution branches established in or incorporated in the Republic of Slovenia;

2. if a parent undertaking established in a Member State that has a subsidiary or a significant branch in at least one other Member State has one or more third-country subsidiary credit institutions;

3. if a credit institution established in a Member State that has a parent undertaking, a subsidiary or a branch in at least one other Member State has one or more third-country branches.

(3) The agreement referred to in the previous paragraph shall determine the procedures to be followed by participating authorities with regard to information exchange and cooperation in the performance of some or all of the tasks cited below and in the exercise of all or particular powers related to the resolution of credit institutions or other entities in the group to which the credit institution belongs and with regard to the exchange of information required for the exercise of these powers and tasks, and in particular with regard to:

1. the preparation and updating of resolution plans;

2. consultation and cooperation in the formulation of resolution plans;

3. the exchange of information necessary for the application of resolution tools and the exercise of resolution powers and similar powers provided by the legislation of the relevant third countries;

4. early warning or consultation of the parties to the cooperation arrangement before taking any significant action under this Act or relevant third-country legislation affecting the credit institution or group to which the arrangement relates;

5. coordinated public communication in the case of joint resolution actions;

6. the procedures and arrangements for information exchange referred to in points 1 to 5 of this paragraph, including the establishment and operation of crisis management groups.

(4) In concluding the arrangements referred to in the second paragraph of this article, Banka Slovenije shall take due account of non-binding arrangements that the European Banking Authority has concluded with the third countries concerned in accordance with Article 97 of Directive 2014/59/EU. Banka Slovenije shall notify the European Banking Authority of the arrangements it has concluded pursuant to this article.

CHAPTER 2: RESOLUTION

2.1 General provisions

Article 26

(Resolution actions)

(1) Resolution actions include:

1. establishing that the conditions for the application of actions for the resolution of a particular resolution entity have been met, whereby resolution proceedings are initiated;

2. deciding to apply one or more resolution tools;

3. using other powers in connection with resolution to prevent the failure of the resolution entity or to implement resolution tools.

(2) The resolution tools referred to in point 2 of the previous paragraph are:

1. write-down and conversion of capital instruments and eligible liabilities;

2 sale of business;

3. establishment of a bridge bank;

4. asset separation;

5. write-down and conversion of bail-inable liabilities.

(3) Resolution actions shall be considered reorganisation measures as provided by Directive 2001/24/EC.

(4) In the event of the application of resolution actions pursuant to this Act, the provisions of the law governing companies with regard to the following shall not apply to the resolution entity:

1. a change in the legal form of undertakings;

2. special rules for cross-border mergers of capital undertakings;

3. expert reports on contributions in kind;

4. the obligation to convene a general meeting in the event of an undertaking’s material losses;

5. decision-making by the general meeting in connection with a capital increase;

6. the obligation to compile a report by independent experts in the event of an in-kind increase in share capital;

7. a capital increase via cash contributions;

8. decision-making by general meeting in connection with a reduction in share capital;

9. a reduction in share capital in the case of multiple classes of shares;

10. safeguards for creditors in the event of a reduction in share capital;

11. a reduction in share capital via the compulsory delisting of shares;

12. a reduction in share capital via the delisting of shares obtained by the undertaking itself or for own account (treasury shares);

13. a write-down in share capital or a reduction in share capital via the delisting of shares in the case of multiple classes of shares.

Article 27

(Resolution objectives)

(1) The objectives of resolving an institution are, by means of the application of resolution actions:

1. to ensure the continuity of the institution’s critical functions;

2. to avoid a significant adverse impact on the financial system, in particular by preventing contagion, including on market infrastructures, and by maintaining market discipline;

3. to protect public funds by minimising reliance on extraordinary public financial support;

4. to protect depositors of guaranteed bank deposits and investors with respect to guaranteed claims against investment firms;

5. to protect client funds and client assets.

(2) Banka Slovenije shall pursue resolution objectives by implementing resolution actions in accordance with this Act and Regulation 806/2014/EU. All of the objectives referred to in the previous paragraph shall be equally important, and Banka Slovenije shall balance them as appropriate with regard to the nature and circumstances of each case.

(3) When pursuing the objectives referred to in the first paragraph of this article, Banka Slovenije shall seek to minimise the cost of resolution and avoid unnecessary reduction in asset value unless this is essential to achieve the resolution objectives.

Article 28

(Resolution principles)

(1) In determining the requirements and exercising powers in relation to resolution actions pursuant to this Act and Regulation 806/2014/EU, Banka Slovenije shall take into account the nature of the activities of the resolution entity, its shareholding structure, its legal form, its risk profile, its size and legal status, its interconnectedness to other institutions or the financial system in general, the scope and complexity of its activities, its membership in an institutional deposit protection scheme that meets the requirements set out in Article 113(7) of Regulation 575/2013/EU or other cooperative mutual solidarity systems as referred to in Article 113(6) of Regulation 575/2013/EU, and whether it provides any investment services or activities.

(2) In applying resolution actions, Banka Slovenije shall comply with the following principles:

1. the shareholders of the bank under resolution are the first to bear losses;

2. after the shareholders of the bank under resolution, losses are borne by other holders of the bank’s capital instruments, and then the remaining creditors, in the reverse order of priority to that applying to the repayment of claims against the resolution entity in normal insolvency proceedings;

3. the management body and senior management of the bank under resolution are generally replaced, except when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;

4. the management body and senior management of the bank under resolution must provide all assistance necessary for the achievement of the resolution objectives;

5. the liability of individuals and legal persons for bank failure is enforced in accordance with the general rules on contractual liability, liability for damages and criminal liability;

6. the creditors of the same priority class are treated equally, except in cases for which this Act provides otherwise;

7. having regard for Article 95 of this Act, no creditor of the bank or of the entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act shall bear greater loss than they would have borne if the bank or entity was wound up in accordance with normal insolvency proceedings;

8. guaranteed deposits are fully protected.

(3) If a bank is a group entity, Banka Slovenije shall apply resolution tools and exercise resolution powers in a way that minimises any adverse impacts on other entities in the group or the group as a whole and on the financial stability in the European Union and its Member States, particularly in the countries where the group operates.

Article 29

(Restrictions on initiation of normal insolvency proceedings with regard to resolution entity)

(1) Normal insolvency proceedings against the entities referred to in points 2 to 4 of the first paragraph of Article 2 of this Act may only be initiated with Banka Slovenije’s prior consent.

(2) The competent court or other authority deciding on the initiation of normal insolvency proceedings against a resolution entity shall immediately notify Banka Slovenije of any proposal to initiate normal insolvency proceedings against a resolution entity referred to in the previous paragraph.

(3) Banka Slovenije shall publish on its website a regularly updated list of entities subject to the obligation referred to in the first paragraph of this article.

(4) The competent court or other authority shall decide on the proposal to initiate normal insolvency proceedings against an entity referred to in the first paragraph of this article if it gives prior notification to Banka Slovenije in accordance with the second paragraph of this article and:

1. Banka Slovenije notified the competent court or other authority that it does not intend to adopt resolution actions in relation to the resolution entity; or

2. Banka Slovenije did not issue a notification referred to in the previous point within seven days of receiving the notification referred to in the second paragraph of this article.

(5) If in accordance with Article 14(5) of Regulation 1024/2013/EU the European Central Bank notifies Banka Slovenije that it intends to withdraw a bank’s authorisation to provide banking services, Banka Slovenije shall, within seven days of receiving such notification, notify the European Central Bank whether it will apply resolution actions to this bank, except when in accordance with Regulation 806/2014/EU the Single Resolution Board is responsible for deciding on the resolution of the bank.

2.2 Requirements for bank resolvability

2.2.1 Assessment of resolvability

Article 30

(Assessment of bank resolvability)

(1) For each bank that is not part of a group supervised on a consolidated basis by Banka Slovenije or another competent authority, Banka Slovenije shall make an assessment of resolvability demonstrating to what extent resolution actions or compulsory winding-up actions can be applied to the bank in order to ensure the continuity of the bank’s critical functions and avoid, as far as possible, any serious adverse impacts on the financial system of the Republic of Slovenia or another Member State or the European Union as a whole. A bank shall be considered resolvable if it is possible to achieve the objectives referred to in the first paragraph of Article 27 of this Act by applying resolution actions or compulsory winding-up actions to the bank. In making a bank resolvability assessment, Banka Slovenije shall take into account the regulatory technical standards referred to in point 1 of the second paragraph of Article 9 of this Act and Section C of the Annex of Directive 2014/59/EU.

(2) In the resolvability assessment referred to in the previous paragraph, Banka Slovenije shall also take into account the potential impact of the actions concerned under conditions of wider financial instability or other system-wide factors.

(3) In the resolvability assessment referred to in the first paragraph of this article, Banka Slovenije shall not take into account potential sources of financing from:

1. any extraordinary public financial support, other than the use of financing arrangements established to finance resolution actions;

2. any emergency liquidity loan by Banka Slovenije;

3. any other emergency liquidity assistance by Banka Slovenije granted under non-standard collateralisation, tenor and interest rate terms.

(4) The resolvability assessment referred to in the first paragraph of this article shall be made solely for the purposes of drawing up and updating each bank resolution plan referred to in Article 39 of this Act. To this end Banka Slovenije shall hold prior consultations with the resolution authorities in another Member State or third country where significant branches of the bank are located, if this is relevant to the branch.

(5) If the bank resolution plan includes the possibility of applying the tool of conversion of capital instruments or bail-inable liabilities, Banka Slovenije shall verify if the bank has the appropriate Common Equity Tier 1 instruments and authorised share capital in a sufficient amount and number for the conversion to be carried out.

(6) A bank shall be deemed to not be resolvable if Banka Slovenije establishes on the basis of a resolvability assessment that legal or material impediments exist with regard to the bank that prevent or impede the resolution actions or compulsory winding-up actions from being applied in such a way that the objectives referred to in the first paragraph of Article 27 of this Act would be achieved (hereinafter: substantive impediments to resolvability). If Banka Slovenije establishes that a bank is deemed to not be resolvable, the activities for the adoption of the bank resolution plan in accordance with the first paragraph of Article 39 of this Act shall be postponed pending the decision on the measures to be taken to reduce or remove the impediments to the resolvability of the bank in accordance with Articles 34 and 35 of this Act.

(7) If a bank is deemed to not be resolvable, Banka Slovenije shall immediately notify the European Banking Authority accordingly.

Article 31

(Prohibition of distributions)

(1) Under the conditions set out in the second paragraph of this article, Banka Slovenije may prohibit a bank from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities (hereinafter: the M-MDA), calculated in accordance with Article 32 of this Act, through any of the following actions:

1. making a distribution in connection with Common Equity Tier 1 capital;

2. creating an obligation to pay variable remuneration or discretionary pension benefits, or pay variable remuneration if the obligation to pay was created at a time when the bank failed to meet the combined buffer requirement; or

3. making payments in connection with Additional Tier 1 capital instruments.

(2) Banka Slovenije may prohibit the distributions referred to in the previous paragraph if the bank is in the position of failing to meet the combined buffer requirement, when the aforementioned requirement is taken into account alongside the minimum requirement for own funds and eligible liabilities, which is determined in accordance with this Act and expressed as a percentage of the bank’s total exposure measure, which is calculated in accordance with Articles 429 and 429a of Regulation 575/2013/EU.

(3) The bank shall notify Banka Slovenije immediately of the circumstances referred to in the previous paragraph.

(4) If Banka Slovenije identifies the circumstances referred to in the second paragraph of this article, it shall assesses without unnecessary delay whether to prohibit the bank from making distributions referred to in the first paragraph of this article, taking account of all of the following factors in that assessment:

1. the reason, duration and magnitude of the failure to meet the combined buffer requirement, and its impact on the bank’s resolvability;

2. the development of the bank’s financial situation and the likelihood of it meeting, in the foreseeable future, the condition referred to in point 1 of Article 68 of this Act;

3. the prospect that the bank will be able to ensure compliance with the requirements referred to in the second paragraph of this article within a reasonable timeframe;

4. where the bank is unable to replace liabilities that no longer meet the eligibility or maturity criteria set out in Articles 72b and 72c of Regulation 575/2013/EU or Articles 50 and 58 of this Act, whether that inability is idiosyncratic or is due to market-wide disturbance;

5. whether the prohibition of distributions referred to in the first paragraph of this article is the most adequate and proportionate means of addressing the bank’s situation, taking into account its potential impact on both the bank’s financing conditions and its resolvability.

(5) Banka Slovenije shall repeat the assessment referred to in the previous paragraph at least once a month, for as long as the bank remains in the circumstances referred to in the second paragraph of this article. The previous paragraph notwithstanding, Banka Slovenije shall prohibit distributions in accordance with the first paragraph of this article if the bank is still in the circumstances referred to in the second paragraph of this article nine months after it notified Banka Slovenije of the circumstances, unless it finds on the basis of an assessment that at least two of the following conditions are met:

1. the failure to meet the combined buffer requirement is due to a serious disturbance to the functioning of financial markets, which leads to broad-based financial market stress across several segments of financial markets;

2. the disturbance referred to in the previous point not only results in the increased price volatility of the bank’s own funds instruments and eligible liabilities instruments or increased costs for the bank, but also leads to a full or partial closure of markets that prevents the bank from issuing own funds instruments and eligible liabilities instruments on those markets;

3. the market closure referred to in the previous point is also observed for several other entities;

4. the disturbance referred to in point 1 of this paragraph prevents the bank from issuing own funds instruments and eligible liabilities instruments sufficient to meet the combined buffer requirement; or

5. the prohibition of distributions referred to in the first paragraph of this article might cause negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

(6) Banka Slovenije shall repeat the assessment referred to in the previous paragraph with regard to the application of an exception at least once a month.

Article 32

(Calculation of M-MDA)

(1) The M-MDA shall be calculated by multiplying the sum of the items referred to in the second paragraph of this article by the factor determined in accordance with the third paragraph of this article. The M-MDA shall be reduced by any amount resulting from any of the distributions referred to in points 1 to 3 of the first paragraph of the previous article.

(2) The sum to be multiplied in accordance with the previous paragraph shall consist of the following items:

1. any interim profits not included in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation 575/2013/EU, less any distributions of profits or other distributions referred to in points 1 to 3 of the first paragraph of the previous article, and less the amount of any tax that would be payable had the bank withheld the distribution of such profit, and

2. any net year-end profits not included in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation 575/2013/EU, less any distributions of profits or other distributions referred to in points 1 to 3 of the first paragraph of the previous article, and less the amount of any tax that would be payable had the bank withheld the distribution of such profit.

(3) Where the Common Equity Tier 1 capital maintained by the bank that is not used to meet any of the requirements set out in Article 92a of Regulation 575/2013/EU or the minimum requirement for own funds and eligible liabilities set out in accordance with this Act, which is expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU, is within:

* the first (i.e. lowest) quartile of the combined buffer requirement, the factor is zero;
* the second quartile of the combined buffer requirement, the factor is 0.2;
* the third quartile of the combined buffer requirement, the factor is 0.4;
* the fourth (i.e. highest) quartile of the combined buffer requirement, the factor is 0.6.

(4) The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

* lower bound of quartile = (combined buffer requirement/4) x (Qn - 1);
* upper bound of quartile = (combined buffer requirement/4) x Qn,

where Qn is the ordinal number of the quartile concerned.

Article 33

(Assessment of resolvability for group)

(1) Banka Slovenije, acting as the group-level resolution authority within the resolution college set up in accordance with Article 164 of this Act, together with the resolution authorities of the group’s subsidiaries and in consultation with the competent bodies of these subsidiaries and the resolution authorities of the countries where significant subsidiaries are located, shall assess whether it is possible to apply resolution or compulsory winding-up actions to the resolution entity, so that:

1. continuation of the critical functions of the group entities is ensured, where they can be easily separated in a timely manner, or by other means; and

2. any serious adverse impacts on the financial system of the Republic of Slovenia or another Member State or the European Union as a whole, including the occurrence of wider financial instability and other effects that impact the fiscal consolidation measures of the entire system, is avoided, as far as possible.

(2) In the assessment referred to in the previous paragraph, Banka Slovenije shall not take into account potential sources of financing from:

1. any extraordinary public financial support, other than the application of financing arrangements set up to finance resolution actions in accordance with the Member State’s domestic legislation;

2. any central bank emergency liquidity loan;

3. any other central bank emergency liquidity assistance under non-standard collateralisation, tenor and interest rate terms.

(3) The resolvability assessment referred to in the first paragraph of this article shall be made at the same time as the drawing-up and updating of the group resolution plan in accordance with Articles 42 to 46 of this Act and solely for the purposes of each drawing-up and updating of the aforementioned plan. When a group consists of more than one resolution group, Banka Slovenije, acting as the group-level resolution authority, together with the other authorities referred to in the first paragraph of this article, shall assess the resolvability of each resolution group according to the procedure set out in Articles 45 and 46 of this Act, in addition to the assessment of the resolvability of the entire group in accordance with this article.

(4) A group shall be deemed to not be resolvable if Banka Slovenije establishes, on the basis of the assessment referred to in the first paragraph of this article, that substantive impediments to resolvability exist. If Banka Slovenije establishes that a group is deemed to not be resolvable, the activities for the adoption of a joint decision regarding the group resolution plan in accordance with the first paragraph of Article 42 of this Act shall be postponed pending the decision on the measures to be taken to reduce or remove the impediments to the resolvability of the bank in accordance with Articles 31 and 35 of this Act.

(5) If a group is deemed to not be resolvable, Banka Slovenije, acting as the group-level resolution authority, shall immediately notify the European Banking Authority accordingly.

Article 34

(Measures to reduce or remove impediments to bank resolvability)

(1) If Banka Slovenije establishes, on the basis of the resolvability assessment referred to in Articles 30 or 33 of this Act, that there are substantive impediments to the resolvability of a bank or a group, it shall immediately notify the bank or the group entity that is established in the Republic of Slovenia and the resolution authorities of the Member States in which the bank or the group entity has significant branches, stating the reasons supporting the resolvability assessment.

(2) Within four months of receiving the notification referred to in the previous paragraph, the bank or group entity shall submit to Banka Slovenije its views regarding the assessment and the identified substantive impediments to resolvability, and shall propose suitable measures to adequately reduce or remove them.

(3) Within two weeks of receiving the notification referred to in the first paragraph of this article, the bank or group entity shall propose to Banka Slovenije possible measures to meet the minimum requirement for own funds and eligible liabilities in accordance with this Act and the combined buffer requirement, and a timeframe for their implementation that takes account of the reasons for a substantive impediment to the resolvability of the bank or group entity, when the substantive impediment is a consequence of:

1. the fact that the bank is in the position of failing to meet the combined buffer requirement, when the aforementioned requirement is taken into account alongside the minimum requirement for own funds and eligible liabilities determined in accordance with this Act and expressed as a percentage of the bank’s total exposure measure, which is calculated in accordance with Articles 429 and 429a of Regulation 575/2013/EU; or

2. the fact that the bank fails to meet the requirements set out in Articles 92a and 494 of Regulation 575/2013/EU, or the minimum requirement for own funds and eligible liabilities determined in accordance with this Act.

(4) Banka Slovenije shall assess whether the proposed measures referred to in the second and third paragraphs of this article effectively address or remove the substantive impediments identified. For the removal or reduction of substantive impediments to the resolvability of the bank or group, Banka Slovenije may use powers and supervisory measures in accordance with the law governing banking, or may propose to the European Central Bank that it use powers and take actions in connection with the bank in accordance with its authorisations pursuant to Regulation 1024/2013/EU. If Banka Slovenije assesses in connection with the proposal referred to in the second or third paragraphs of this article that it is not possible to reduce or remove the substantive impediments to the resolvability of the bank or group by means of the proposed measures, it shall issue an order requiring the bank to implement one or more alternative measures for reducing or removing the substantive impediments by a stipulated deadline, as follows:

1. the bank shall review the appropriateness of group financial support agreements or examine the possibility of concluding such agreements or conclude appropriate service arrangements, either within the group or with third parties, with regard to the provision of critical functions;

2. the bank shall limit its maximum allowed exposure on an individual or consolidated basis from capital instruments, eligible liabilities or bail-inable liabilities, with the exception of liabilities held by entities that are part of the same group;

3. the bank shall provide special or regular additional reports on facts relevant to resolution;

4. the bank shall divest specific assets;

5. the bank shall limit or cease specific activities;

6. the bank shall limit or cease the development of new or existing business lines or limit or dispose of new or existing products;

7. the bank shall change its legal arrangements and operational processes, so as to reduce complexity and ensure that critical functions may be legally and operationally separated from other functions through the application of resolution tools;

8. the bank or group entity or the parent undertaking shall establish a parent financial holding company in the Republic of Slovenia or an EU parent financial holding company;

9. the resolution entity shall submit a plan to restore compliance with the minimum requirement for own funds and eligible liabilities in accordance with this Act, expressed as:

* a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU, and, when appropriate, the combined buffer requirement, and
* a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation 575/2013/EU;

10. the resolution entity shall issue eligible liabilities to meet the minimum requirement for own funds and eligible liabilities determined in accordance with this Act;

11. the resolution entity shall take other measures to ensure that the bank meets the minimum requirement for own funds and eligible liabilities determined in accordance with this Act, in particular by negotiating changes to the existing arrangements with regard to any eligible liabilities, Additional Tier 1 instruments and Tier 2 instruments that the bank has issued, so that the new arrangements for these liabilities and instruments in accordance with the regulations governing the instrument or liability facilitate the write-down or conversion of these liabilities or instruments on the basis of the resolution authority’s decision;

12. the bank or entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act shall modify the maturity profile of the following to ensure permanent compliance with the minimum requirement for own funds and eligible liabilities determined in accordance with this Act:

* capital instruments, after obtaining the resolution authority’s consent, and
* eligible liabilities;

13. if the bank or group entity is a subsidiary of a mixed-activity holding company, the mixed-activity holding company shall establish a separate financial holding company to control the bank or group entity when necessary to facilitate the resolution of the bank or group and to prevent an adverse impact on the non-financial part of the group from the application of the resolution tools;

14. the resolution entity shall obtain the appropriate authorisation of its management bodies so that, in the event of the application of the conversion tool in accordance with this Act, a suitable number of new Common Equity Tier 1 instruments in an appropriate amount are immediately provided.

(5) In determining the alternative measures referred to in the previous paragraph, Banka Slovenije shall take into account their proportionality with regard to the level of risk to financial stability due to the substantive impediments to resolvability identified and with regard to the effect of required alternative measures on the operation and stability of the bank and its ability to contribute to the strengthening of the economy.

(6) In its order on the application of alternative measures referred to in the fourth paragraph of this article, Banka Slovenije shall:

1. state the reasons supporting the assessment that the measures proposed by the bank to reduce or remove the substantive impediments to resolvability are not adequate;

2. explain how the alternative measures will adequately ensure the reduction or removal of the substantive impediments to resolvability; and

3. explain the proportionality of the ordered measures referred to in the fourth paragraph of this article in the reduction or removal of substantive impediments to resolvability, having regard for the previous paragraph.

(7) Before deciding on alternative measures referred to in the fourth paragraph of this article, Banka Slovenije shall consult the Financial Stability Board with regard to the possible effects of these measures on the bank or group entity, on the internal financial services market, and on financial stability in other Member States and in the European Union as a whole.

(8) Within one month of receiving the order on the application of alternative measures referred to in the fourth paragraph of this article, the bank shall submit to Banka Slovenije a plan for their implementation.

(9) The provisions of Article 137 of this Act shall apply *mutatis mutandis* to the effects of the order on the application of alternative measures referred to in the fourth paragraph of this article on the implementation of contractual arrangements with counterparties.

Article 35

(Measures to reduce or remove impediments to group resolvability)

(1) Banka Slovenije, acting as the group-level resolution authority, together with the resolution authorities of subsidiaries and the resolution authorities of the Member States where material subsidiaries are located, within the resolution college set up in accordance with Articles 164 and 165 of this Act, shall examine the assessment of the group’s resolvability drawn up in accordance with Article 33 of this Act, and shall strive for the adoption of a joint decision on the application of measures for reducing or removing substantive impediments to resolvability referred to in the previous article for all resolution entities and their subsidiaries that are entities referred to in the first paragraph of Article 2 of this Act and are part of the group.

(2) Banka Slovenije, acting as the group-level resolution authority, in cooperation with the European Banking Authority under the conditions referred to in Article 25(1) of Regulation 1093/2010/EU and after consulting the competent authorities within the college of supervisory authorities, shall draw up a report analysing the impediments to effective implementation of resolution actions in connection with the group, and in connection with the resolution groups when the group consists of more than one resolution group. The report shall contain recommendations on proportionate and targeted measures that Banka Slovenije considers necessary and appropriate for reducing or removing these impediments, duly taking into account the impact on the group’s business model.

(3) Banka Slovenije, acting as the group-level resolution authority, shall send the report referred to in the previous paragraph to the EU parent undertaking, the resolution authorities of subsidiaries and the resolution authorities of Member States where significant branches are located. When the substantive impediment to resolvability of the group is a consequence of the situation of the group entity referred to in the third paragraph of the previous article, after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions Banka Slovenije shall notify the EU parent undertaking of its assessment.

(4) Within four months of receiving the report referred to in the second paragraph of this article, the EU parent undertaking shall submit to Banka Slovenije its views regarding the assessment and the identified substantive impediments to resolvability, and shall propose suitable measures to remove or adequately reduce these impediments at group level. When the substantive impediments to resolvability identified in the report are a consequence of the situation referred to in the third paragraph of the previous article in connection with a group entity, within two weeks of receiving the notification referred to in the previous paragraph the EU parent undertaking shall propose to Banka Slovenije, acting as the group-level resolution entity, possible measures that it will implement within a specific timeframe and that take account of the reasons for the substantive impediment to resolvability, which will ensure compliance with the following:

* the minimum requirement for own funds and eligible liabilities determined in accordance with this Act, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU;
* when appropriate, the combined buffer requirement and the minimum requirement for own funds and eligible liabilities determined in accordance with this Act, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation 575/2013/EU.

(5) Banka Slovenije, acting as the group-level resolution authority, shall submit to the competent authorities, the resolution authorities of subsidiaries in Member States, the resolution authorities of Member States where significant branches are located and the European Banking Authority information on the measures proposed by the EU parent undertaking in accordance with the previous paragraph, or shall inform them that the EU parent undertaking has failed to propose any measures in accordance with the previous paragraph.

(6) Banka Slovenije, acting as the group-level resolution authority, shall endeavour, together with the resolution authorities of subsidiaries within the resolution college set up in accordance with Article 164 of this Act, and after consulting the other competent authorities and resolution authorities of the Member States where significant branches are located, within four months of the submission of the views and proposals of the EU parent undertaking referred to in the fourth paragraph of this article, or within one month of the deadline for their submission if the EU parent undertaking failed to submit any views or propose any measures by the required deadline, to adopt a joint decision on the following:

1. the identification of substantive impediments to resolvability of the group;

2. the assessment of measures proposed by the EU parent undertaking in accordance with the fourth paragraph of this article, and measures to reduce or remove substantive impediments to resolvability required by authorities to address or remove them, having regard for the potential effects in all Member States where the group is active.

(7) The joint decision in connection with substantive impediments to resolvability that are a consequence of the situation referred to in the third paragraph of the previous article in connection with a group entity shall be taken within two weeks of the submission of the views and proposals by the EU parent undertaking referred to in the fourth paragraph of this article.

(8) If the joint decision is not adopted by the deadline referred to in the sixth or seventh paragraphs of this article, Banka Slovenije shall consider the views and reservations of the resolution authorities from other Member States and, acting as the group-level resolution authority, shall itself make the relevant decision on appropriate measures referred to in the fourth paragraph of the previous article that need to be adopted at group level.

(9) Banka Slovenije, acting as the group-level resolution authority, shall submit to the EU parent undertaking the joint decision referred to in the sixth or seventh paragraphs of this article, and the Banka Slovenije decision referred to in the previous paragraph if a joint decision has not been adopted, together with the grounds for the decision.

(10) With regard to the joint decision referred to in the previous paragraph, Banka Slovenije, acting as the group-level resolution authority, may submit to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 31(c) of Regulation 1093/2010/EU. Banka Slovenije, acting as the group-level resolution authority, shall suspend the decision-making procedure referred to in the sixth, seventh and eighth paragraphs of this article if, by the deadline for adopting a joint decision referred to in the sixth or seventh paragraphs of this article, any of the resolution authorities responsible for the resolution of a group entity addresses to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU in connection with measures referred to in the fourth paragraph of the previous article. If the European Banking Authority makes a decision on this matter within one month of receiving the request, Banka Slovenije shall comply with the decision of the European Banking Authority when making a decision on the basis of the sixth, seventh or eighth paragraphs of this article. If the European Banking Authority fails to make a decision on the matter within one month of receiving the request and a joint decision is not adopted in accordance with the sixth or seventh paragraphs of this article, Banka Slovenije shall make a decision in accordance with the eighth paragraph of this article.

Article 36

(Measures to reduce or remove impediments to group resolvability in connection with resolution entity in Republic of Slovenia)

(1) Banka Slovenije, acting as the resolution authority of a resolution entity within the resolution college established in accordance with Article 164 of this Act, together with the group-level resolution authority and the resolution authorities of the Member States responsible for resolving subsidiary resolution entities or undertakings in the group, shall examine the assessment of the group’s resolvability drawn up in accordance with Article 33 of this Act, and shall strive for the adoption of a joint decision on the application of measures for reducing or removing substantive impediments to resolvability of the group and make a joint decision on measures referred to in the fourth paragraph of Article 34 of this Act by the deadlines applying to the adoption of a joint decision at group level in accordance with the previous article.

(2) Before the deadline for adopting a joint decision or until the adoption of a joint decision referred to in the previous paragraph, Banka Slovenije may, acting as the resolution authority of a resolution entity in the Republic of Slovenia, address to the European Banking Authority a request for assistance in the adoption of a joint decision referred to in the previous paragraph in accordance with Article 19 of Regulation 1093/2010/EU.

(3) If the joint decision is not adopted by the deadline referred to in the sixth paragraph of the previous article and the group-level resolution authority adopts its own decision on the group resolution plan under the conditions set out in the eighth and tenth paragraphs of the previous article, Banka Slovenije, taking into account the views and reservations of other resolution authorities of other entities in the same resolution group and the views and reservations of the group-level resolution authority, shall itself decide on the measures to reduce or remove the identified impediments to resolvability that the subsidiary must adopt on an individual basis in accordance with the fourth paragraph of Article 34 of this Act. Banka Slovenije shall explain its decision and shall communicate it to the resolution entity.

(4) Banka Slovenije, acting as the resolution authority of a resolution entity in the Republic of Slovenia, shall suspend the decision-making procedure referred to in the previous paragraph if, by the deadline for adopting a joint decision referred to in the sixth or seventh paragraphs of the previous article, a resolution authority responsible for the resolution of a group entity addresses to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU. If the European Banking Authority makes a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the decision of the European Banking Authority. If the European Banking Authority fails to make a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the previous paragraph.

Article 37

(Measures to reduce or remove impediments to group resolvability with regard to subsidiary or significant branch in Republic of Slovenia)

(1) Banka Slovenije, acting as the resolution authority of a subsidiary in the group or as a resolution authority in connection with a significant branch in the Republic of Slovenia, within the resolution college established in accordance with Articles 164 or 165 of this Act, together with the group-level resolution authority and the resolution authorities of the Member States responsible for subsidiaries in the group, shall examine the assessment of the group’s resolvability drawn up in accordance with Article 33 of this Act, and shall strive for the adoption of a joint decision on the application of measures for reducing or removing impediments to resolvability of the group. At the same time Banka Slovenije, acting as the resolution authority of a subsidiary in the group or as a resolution authority in connection with a significant branch in the Republic of Slovenia, within the resolution college established in accordance with Articles 164 or 165 of this Act, shall endeavour to adopt a joint decision on the group resolution plan by the deadlines applying to the adoption of a joint decision at the level of the group or the resolution entity, having regard for Articles 35 and 36 of this Act.

(2) Before the deadline for adopting a joint decision at the level of the group or the resolution entity or until the adoption of a joint decision, Banka Slovenije may, acting as the resolution authority of a subsidiary or as the resolution authority in connection with a significant branch in the Republic of Slovenia, address to the European Banking Authority a request for assistance in the adoption of a joint decision referred to in the previous paragraph in accordance with Article 19 of Regulation 1093/2010/EU.

(3) If the joint decision is not adopted by the deadline referred to in the sixth paragraph of Article 35 of this Act and the group-level resolution authority or the resolution authority responsible at the level of the resolution entity itself adopts a decision on the group resolution plan under the conditions set out in the eighth and tenth paragraphs of Article 35 of this Act or the third paragraph of the previous article, Banka Slovenije, taking into account the views and reservations of other resolution authorities of group entities, shall decide on the measures referred to the fourth paragraph of Article 34 of this Act that the subsidiary must adopt on an individual basis. Banka Slovenije shall explain its decision, and shall communicate it to the subsidiary and the resolution entity in the same resolution group, and to the resolution authority of the aforementioned entity and the group-level resolution authority.

(4) Banka Slovenije, acting as the resolution authority of a subsidiary or as a resolution authority in connection with a significant branch in the Republic of Slovenia, shall suspend the decision-making procedure referred to in the previous paragraph if, by the deadline for adopting a joint decision having regard for the sixth and seventh paragraphs of Article 35 of this Act, any resolution authority of a group entity addresses to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU in connection with measures referred to in the fourth paragraph of the previous article. If the European Banking Authority makes a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the decision of the European Banking Authority. If the European Banking Authority fails to make a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the previous paragraph.

Article 38

(Compliance with decisions in connection with measures to reduce or remove impediments to group resolvability)

Banka Slovenije shall consider as final the joint decisions referred to in the sixth and seventh paragraphs of Article 35 of this Act, the first paragraph of Article 36 of this Act, and the first paragraph of the previous article, and the decisions adopted by resolution authorities of group entities when a joint decision has not been adopted.

2.2.2 Bank resolution plan

Article 39

(Formulation of resolution plan)

(1) For each bank that is not part of a group supervised on a consolidated basis by Banka Slovenije or another competent authority, Banka Slovenije shall formulate a resolution plan determining the resolution or compulsory winding-up actions that could be implemented at the bank if it were failing, taking into account the assessment referred to in Article 30 of this Act.

(2) With regard to the formulation of a resolution plan, Banka Slovenije shall consult the resolution authorities of the Member States in which the bank has significant branches.

(3) In the event of substantial changes in the legal and organisational structure of the bank, its business operations or its financial situation that could have a significant impact on the way the resolution plan is implemented, but at least once a year, Banka Slovenije shall examine the adequacy of the resolution plan and update it if necessary. The bank shall inform Banka Slovenije of the changes referred to in the first sentence of this paragraph within three business days.

(4) Banka Slovenije may require the bank or other entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act to put in place, maintain and submit to it detailed records containing information on financial contracts concluded. Banka Slovenije may require that records on concluded financial contracts be kept, and may determine the content and method of record keeping, as well as the time limit by which the banks and entities to which the requirement referred to in the first sentence of this paragraph applies must be able to submit the records concerned.

(5) Banka Slovenije shall also update the resolution plan if, in relation to the bank, resolution actions are implemented or powers are exercised in connection with the write-down or conversion of capital instruments or eligible liabilities that are implemented independently of other resolution tools. In this event Banka Slovenije, in setting the deadlines referred to in point 15 of the third paragraph of Article 40 of this Act, shall take account of the deadline set in accordance with the law governing banking for the fulfilment of supervisory requirements with regard to the additional capital requirement.

(6) Banka Slovenije shall submit every update to the resolution plan to the competent authorities in the countries where significant branches of the bank are established.

Article 40

(Content of resolution plan)

(1) In formulating a resolution plan, Banka Slovenije shall take into account appropriate scenarios, including a scenario in which the failure of the bank is due to general financial instability or other similar negative events at the level of the entire financial system and a scenario in which the bank failure is due to factors related to the bank.

(2) A resolution plan shall outline the possibilities for the application of tools and powers for bank resolution while taking into account any impediments to resolution identified on the basis of the bank resolvability assessment referred to in Article 30 of this Act and the measures for reducing or removing impediments to resolution provided in Article 34 of this Act.

(3) A resolution plan shall determine possibilities for the application of bank resolution tools and powers and shall contain at least the following elements, including, when possible, the quantitative data:

1. a summary of the key elements of the resolution plan;

2. a summary of material changes to the bank that have occurred since the formulation or last update of the resolution plan;

3. a demonstration of how critical functions and core business operations could be legally and economically separated, to the extent necessary, from other functions so as to ensure their continuity upon the failure of the bank;

4. an estimate of the timeframe for executing each material aspect of the resolution plan;

5. a detailed description of the resolvability assessment in accordance with Article 30 of this Act;

6. a description of any measures for reducing or removing impediments to resolvability set out in accordance with Article 34 of this Act;

7. a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the bank;

8. a detailed description of the measures for ensuring that the information required by Banka Slovenije in accordance with Article 41 of this Act is up to date and submitted to Banka Slovenije in due time;

9. an explanation as to how the resolution actions could be financed under different resolution scenarios;

10. a detailed description of different resolution strategies that could be applied according to different possible scenarios;

11. a description of critical interdependencies;

12. a description of options for maintaining access to the infrastructure for payments and clearing and other services, including an assessment of the portability of bank positions;

13. an analysis of the impacts of the resolution plan on the bank’s employees, including an assessment of any associated costs, and a description of envisaged procedures for consulting the employees during the resolution process;

14. a plan for communicating with the media and the public;

15. the minimum requirement for own funds and eligible liabilities that the bank must meet in accordance with this Act, and, where applicable, the deadline to meet this requirement set out in accordance with Article 64 of this Act, or when Banka Slovenije sets out requirements pursuant to Article 60 of this Act, the timeframe set out in accordance with Article 64 of this Act within which the resolution entity must meet the requirement;

16. a description of the essential operations and systems for maintaining the continuous functioning of the bank’s operational processes;

17. any opinion or view of the bank concerning the resolution plan.

(4) In formulating a resolution plan, in particular with regard to the financing options referred to in point 9 of the previous paragraph, Banka Slovenije shall not take into account:

1. any extraordinary public financial support, other than the use of financing arrangements established to finance resolution actions;

2. any emergency liquidity loan by Banka Slovenije;

3. any other emergency liquidity assistance by Banka Slovenije granted under non-standard collateralisation, tenor and interest rate terms.

(5) Notwithstanding the third and fourth paragraphs of this article, a resolution plan shall also include an analysis of how and when the bank could apply for an emergency liquidity loan or other emergency liquidity assistance from Banka Slovenije in the circumstances considered in the resolution plan, and shall identify the assets that would likely be accepted as collateral.

(6) Banka Slovenije shall send the summary of the key elements of the resolution plan referred to in point 1 of the third paragraph of this article to the bank.

Article 41

(Participation of bank in formulation of resolution plan)

(1) Banka Slovenije may request that the bank participate in the formulation and updating of the resolution plan by providing any information necessary for the formulation and implementation of the resolution plan.

(2) Banka Slovenije may, via an implementing regulation, set out the information that banks must submit regularly for the purpose of formulating and updating resolution plans.

2.2.3 Group resolution plan

Article 42

(Group resolution plan)

(1) Banka Slovenije, acting as the group-level resolution authority, together with the resolution authorities of subsidiaries established in a Member State and after consulting the resolution authorities of significant branches included in the group resolution, shall adopt and update a group resolution plan, having regard for Article 43 of this Act and the procedures referred to in Articles 44 to 46 of this Act.

(2) In the event of substantial changes in the legal and organisational structure, business operations or financial situation of the group or an individual undertaking in the group that could have a significant impact on the implementation of the resolution plan, but at least once a year, Banka Slovenije, acting as the group-level resolution authority, shall ensure that the adequacy of the group resolution plan is reviewed and shall update it if necessary. The bank shall inform Banka Slovenije of the changes referred to in the first sentence of this paragraph within three business days.

(3) Banka Slovenije, acting as the group-level resolution authority, shall submit every update to the resolution plan to the competent authorities of the Member States where group entities or significant branches included in the group resolution are established.

(4) Banka Slovenije shall carry out or participate in the assessment of group resolvability referred to in Article 33 of this Act at the same time as it formulates or updates the group resolution plan pursuant to this article. A detailed description of the assessment of resolvability in accordance with Article 33 of this Act shall be attached to the group resolution plan.

Article 43

(Content of group resolution plan)

(1) The group resolution plan shall set out resolution actions for:

1. an EU parent undertaking established in the Republic of Slovenia or another Member State;

2. subsidiaries that are part of the group and are established in the Republic of Slovenia or another Member State;

3. financial holding companies, mixed financial holding companies or mixed-activity holding companies established in the Republic of Slovenia or another Member State;

4. subsidiaries that are part of the group and are established in a third country, having regard for the provisions of this Act on ensuring the effectiveness of resolution in third countries and on cooperation and information exchange with third-country resolution authorities.

(2) The group resolution plan shall define the resolution entities and the resolution groups for each group. The group resolution plan shall encompass at least the following elements:

1. the resolution actions to be taken for resolution entities within the framework of various resolution scenarios in accordance with the first paragraph of Article 40 of this Act, and the implications of these resolution actions in connection with other resolution entities, for the parent undertaking and the subsidiary institutions;

2. when the group includes more than one resolution group, the resolution actions to be taken for the resolution entities from each resolution group, and the implications of these actions for:

* other entities in the group that belong to the same resolution group, and
* other resolution groups;

3. the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to resolution entities established in a Member State, including third-party measures to facilitate the purchase of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities or resolution groups, and to identify any potential impediments to a coordinated resolution;

4. where a group includes entities established in a third country, the identification of appropriate arrangements for cooperation and coordination with the relevant authorities of these third countries and the implications for the resolution of group entities within the European Union;

5. the identification of measures necessary for group resolution if the conditions for resolution are met, including the legal and economic separation of certain functions or business lines;

6. the identification of any additional measures not listed in Regulation 806/2014/EU or this Act that the resolution authorities intend to apply in connection with entities in the individual resolution group;

7. the identification of options for the financing of group resolution actions and any resolution financing arrangement and a presentation of principles for sharing financing responsibility between funding sources in different Member States; these principles must be based on fair and balanced criteria and take into account the rules for determining the contribution of individual national resolution financing arrangements and potential effects on the financial stability in all the Member States affected.

(3) In formulating a group resolution plan referred to in the first paragraph of the previous article, Banka Slovenije shall not take into account sources of financing from:

1. any extraordinary public financial support, other than the application of financing arrangements set up to finance resolution in accordance with the Member State’s domestic legislation;

2. any emergency liquidity loan by Banka Slovenije;

3. any other emergency liquidity assistance by Banka Slovenije granted under non-standard collateralisation, tenor and interest rate terms.

(4) The group resolution plan must not have a disproportionate impact on any Member State.

Article 44

(Procedure for formulating resolution plan for group under competence of Banka Slovenije)

(1) Banka Slovenije, acting as the group-level resolution authority, may require the EU parent undertaking to submit any information necessary for the formulation and implementation of the group resolution plan that relates to this EU parent undertaking and, to the extent applicable, to each entity in the group, including the entities referred to in points 3 and 4 of the first paragraph of Article 2 of this Act.

(2) Having regard for the requirements concerning the protection of confidential information provided by this Act, Banka Slovenije, acting as the group-level resolution authority, shall provide the information referred to in the previous paragraph to the following authorities:

1. the resolution authorities of the Member States responsible for resolution actions for subsidiaries;

2. the resolution authorities of the Member States in which significant branches are located;

3. the competent authorities participating in the college of competent authorities with regard to supervision on a consolidated basis, under the conditions set out by the law governing banking;

4. the resolution authorities of the Member States in which the entities referred to in points 3 and 4 of the first paragraph of Article 2 of this Act are established;

5. the European Banking Authority.

(3) The information that Banka Slovenije, acting as the group-level resolution authority, provides to the authorities referred to in points 1 to 4 of the previous paragraph shall include at least the information relevant to subsidiaries or significant branches. The information that Banka Slovenije, acting as the group-level resolution authority, provides to the European Banking Authority shall include all information the European Banking Authority needs to perform its tasks in connection with group resolution plans.

(4) Banka Slovenije, acting as the group-level resolution authority, may condition the provision of information on subsidiaries established in a third country on the consent of the competent authority or resolution authority in the third country.

Article 45

(Responsibilities of Banka Slovenije acting as group-level resolution authority)

(1) Banka Slovenije, acting as the group-level resolution authority, shall endeavour, together with the resolution authorities of subsidiaries within the resolution college established in accordance with Articles 164 or 165 of this Act, to adopt a joint decision on the group resolution plan within four months of providing the information in accordance with the previous article and after consulting the competent authorities, including the competent authorities of the Member States in which significant branches are located. When the group consists of more than one resolution group, resolution actions referred to in point 2 of the second paragraph of Article 43 of this Act shall also be included in the joint decision. Banka Slovenije shall submit the joint decision on the group resolution plan to the EU parent undertaking.

(2) If the joint decision referred to in the previous paragraph is not adopted within four months of the provision of information in accordance with the previous article, Banka Slovenije shall itself adopt a decision on the group resolution plan. Banka Slovenije’s decision shall state the reasons and take into account the views and reservations of other resolution authorities. Banka Slovenije shall submit the decision on the group resolution plan to the EU parent undertaking.

(3) With regard to the joint decision referred to in the first paragraph of this article, Banka Slovenije, acting as the group-level resolution authority, may submit to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU, except when it assesses, after consulting the competent ministry, that the matter on which there was disagreement in the procedure for the adoption of a joint decision referred to in the first paragraph of this article could affect the fiscal situation in the Republic of Slovenia.

(4) Banka Slovenije, acting as the group-level resolution authority, shall suspend the decision-making procedure referred to in the first paragraph of this article, if one or more resolution authorities of subsidiaries, within four months of the provision of information in accordance with the previous article and before the adoption of a joint decision, submit to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU. If the European Banking Authority makes a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the decision of the European Banking Authority. If the European Banking Authority fails to make a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the second paragraph of this article.

(5) Banka Slovenije shall require the European Banking Authority to suspend the decision-making procedure based on the request referred to in the previous paragraph if it assesses that the matter could affect the fiscal situation in the Republic of Slovenia.

(6) If a resolution authority of another Member State responsible for the resolution of a subsidiary in the group assesses that the matter could affect the fiscal situation in that Member State, Banka Slovenije, acting as the group-level resolution authority, shall reassess the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

(7) In adopting and updating the group resolution plan, Banka Slovenije may, in the cases referred to in the first paragraph of this article, at its discretion invite the resolution authorities in the third countries in which the group has subsidiaries, financial holding companies or significant branches to participate in the formulation and updating of the group resolution plan, provided that the conditions regarding the protection of confidential information in accordance with this Act are met.

Article 46

(Responsibilities of Banka Slovenije acting as resolution authority of subsidiary in group)

(1) Banka Slovenije, acting as the resolution authority of a group’s subsidiary or as the resolution authority with regard to a significant branch in the Republic of Slovenia, shall endeavour, together with the group-level resolution authority and other resolution authorities responsible for the group’s subsidiaries, to adopt a joint decision on the group resolution plan within four months of receiving the information regarding the group resolution plan from the group-level resolution authority and after consulting the relevant competent authorities, including the competent authorities of the Member States in which significant branches are located.

(2) Banka Slovenije may, acting as the resolution authority of a subsidiary or as the resolution authority with regard to a significant branch in the Republic of Slovenia, within four months of receiving the information from the group-level resolution authority or until the adoption of the joint decision, submit to the European Banking Authority a request for assistance in the adoption of a joint decision referred to in the previous paragraph in accordance with Article 19 of Regulation 1093/2010/EU, except when it assesses, after consulting the competent ministry, that the matter on which there was disagreement in the procedure for the adoption of a joint decision referred to in the previous paragraph could affect the fiscal situation in the Republic of Slovenia.

(3) When the joint decision referred to in the first paragraph of this article is not adopted within four months of the information from the group-level resolution authority being received, and the group-level resolution authority itself adopts the decision on the group resolution plan, if it does not agree with the group resolution plan Banka Slovenije, taking into account the views and reservations of the other resolution authorities of group entities, may adopt a decision that defines the resolution entities as necessary and may adopt and update the resolution plan for the resolution group that consists of entities falling under its competence. Banka Slovenije shall state the reasons for the decision and for the disagreement with the group resolution plan and shall communicate the decision to all resolution authorities of group entities.

(4) Banka Slovenije, acting as the resolution authority of a subsidiary or as the resolution authority with regard to a significant branch in the Republic of Slovenia, shall suspend the decision-making procedure referred to in the previous paragraph, if another resolution authority of a group entity, within four months of receiving the information from the group-level resolution authority, submits to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU. If the European Banking Authority makes a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision on the basis of the previous paragraph in accordance with the decision of the European Banking Authority. If the European Banking Authority fails to make a decision on this matter within one month of receiving the request, Banka Slovenije shall make a decision in accordance with the previous paragraph.

(5) Banka Slovenije may, together with other resolution authorities of group entities in other Member States that do not disagree in the procedure referred to in the third paragraph of this article, adopt a joint decision within the meaning of the first paragraph of this article with regard to the resolution plan for the group that includes the entities for which these resolution authorities are responsible.

Article 47

(Compliance with decisions concerning resolution of group entities)

Banka Slovenije shall consider as final the joint decisions in connection with the group resolution plan, and the decisions that individual resolution authorities adopt when a joint decision is not adopted, having regard for Articles 45 and 46 of this Act.

2.2.4 Simplified resolution plan

Article 48

(Simplified resolution plan)

(1) Banka Slovenije may formulate a simplified resolution plan for a bank or group if it assesses, after consulting the Financial Stability Board, that the failure of the bank is not likely to have significant adverse effects on the functioning of the financial market, the operations of other institutions, funding conditions or the wider economy.

(2) In the assessment referred to in the previous paragraph, Banka Slovenije shall take into account the nature of the bank’s business, its shareholding structure, its risk profile, its size and legal form, its interconnectedness to other institutions or the financial system in general, the scope and complexity of its activities and the provision of investment services and transactions.

(3) In formulating the simplified resolution plan, Banka Slovenije shall determine:

1. the content and details of the simplified resolution plan, which includes only some elements referred to in Articles 40 and 43 of this Act;

2. the updating of the resolution plan in time intervals that can be longer than one year;

3. the information that banks provide in connection with the simplified resolution plan;

4. the level of detail for the information and analyses considered in the resolvability assessment pursuant to Article 30 of this Act.

(4) At any time Banka Slovenije may decide that the simplifications referred to in the previous paragraph are not to be taken into account in the updating of the resolution plan in connection with a bank or group for which a simplified resolution plan is formulated in accordance with this article.

(5) Notwithstanding the simplifications referred to in the third paragraph of this article, Banka Slovenije may, with regard to a bank for which a simplified resolution plan is formulated in accordance with this article, adopt any supervisory measures pursuant to the law governing banking or resolution actions provided by this Act.

2.2.5 Minimum requirement for own funds and eligible liabilities

Article 49

(Minimum requirement for own funds and eligible liabilities)

(1) A resolution entity shall at all times meet the requirement for own funds and eligible liabilities, at least at the levels determined by Banka Slovenije in accordance with this Act.

(2) Via an order Banka Slovenije shall for each resolution entity set the minimum requirement for own funds and eligible liabilities that it is required to meet in accordance with the previous paragraph (hereinafter: minimum requirement for own funds and eligible liabilities).

(3) The minimum requirement for own funds and eligible liabilities determined in accordance with this Act shall be expressed as a percentage of:

1. the total risk exposure of an entity referred to in the first paragraph of this article, calculated in accordance with Article 92(3) of Regulation 575/2013/EU;

2. the total exposure measure of an entity referred to in the first paragraph of this article, calculated in accordance with Articles 429 and 429a of Regulation 575/2013/EU.

Article 50

(Eligible liabilities)

(1) Liabilities shall be included in the amount of eligible liabilities for meeting the minimum requirement for own funds and eligible liabilities of a resolution entity only where they satisfy the conditions referred to in Articles 72a, 72b and 72c of Regulation 575/2013/EU, except Article 72b(2)(d).

(2) Where this Act refers to Articles 92a or 92b of Regulation 575/2013/EU in connection with the minimum requirement for own funds and eligible liabilities, the previous paragraph notwithstanding eligible liabilities shall consist of eligible liabilities as defined in Article 72k of Regulation 575/2013/EU and determined in accordance with Chapter 5a of Title I of Part Two of Regulation 575/2013/EU.

(3) Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions referred to in the first paragraph of this article, except for Article 72a(2)(l) of Regulation 575/2013/EU, shall be included in the amount for meeting the minimum requirement for own funds and eligible liabilities only where one of the following conditions is met:

1. the principal amount of the liability arising from the debt instrument is known at the time of issue, is fixed or increasing, and is not affected by an embedded derivative feature, and the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of Regulation 575/2013/EU; or

2. the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency of the issuer and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.

(4) Debt instruments referred to in the previous paragraph, including their embedded derivatives, shall not be subject to any netting agreement, and the valuation of such instruments shall not be subject to the third paragraph of Article 105 of this Act.

(5) The amount for meeting the minimum requirement for own funds and eligible liabilities shall only include the part of the liabilities referred to in the third paragraph of this article that corresponds to the principal amount referred to in point 1 of the third paragraph of this article or the fixed or increasing amount referred to in point 2 of the third paragraph of this article.

(6) Where liabilities are issued by a subsidiary established in a Member State to an existing shareholder that is not part of the same resolution group, and that subsidiary is part of the same resolution group as the resolution entity, those liabilities shall be included in eligible liabilities for meeting the minimum requirement for own funds and eligible liabilities of that resolution entity, provided that all of the following conditions are met:

1. they are issued in accordance with the fifth paragraph of Article 58 of this Act;

2. the use of the write-down or conversion tool in relation to those liabilities in accordance with this Act does not affect the control of the subsidiary by the resolution entity;

3. those liabilities do not exceed an amount determined by subtracting:

* the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with the sixth paragraph of Article 58 of this Act from
* the amount required in accordance with Article 58 of this Act.

Article 51

(Sale of subordinated eligible liabilities to retail clients)

(1) An issuer of eligible liabilities shall ensure that the total nominal amount of individual eligible liabilities that meet the conditions referred to in Article 72a of Regulation 575/2013/EU except for the conditions referred to in Article 72a(1)(b), including the conditions referred to in Article 72b of Regulation 575/2013/EU, except Articles 72b(3), 72b(4) and 72b(5), and that are intended for sale to investors that in accordance with the law governing the financial instruments market have the position of retail clients is at least EUR 50,000.

(2) A person providing investment services in the Republic of Slovenia as an investment firm, a credit institution, a manager of an undertaking for collective investment in transferable securities or a manager of an alternative investment fund may sell eligible liabilities that meet the conditions referred to in Article 72a of Regulation 575/2013/EU except for the conditions referred to in Article 72a(1)(b), including the conditions referred to in Article 72b of Regulation 575/2013/EU, except Articles 72b(3), 72b(4) and 72b(5), to an investor that in accordance with the law governing the financial instruments market has the position of a retail client if the total nominal amount of the individual eligible liabilities is at least EUR 50,000.

(3) The previous paragraph notwithstanding, the provisions of law governing the financial instruments market shall apply to the obligation to explain and the obligation to report to the client in connection with investment advice and asset management services.

Article 52

(Criteria for determining minimum requirement for own funds and eligible liabilities)

(1) Banka Slovenije shall determine the minimum requirement for own funds and eligible liabilities on the basis of the following criteria:

1. the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the write-down and conversion tool, in a way that meets the resolution objectives;

2. the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are resolution entities but are not resolution entities have sufficient own funds and eligible liabilities to ensure that, in the event of the use of the tool of write-down and conversion of capital instruments and eligible liabilities, or other bail-inable liabilities in accordance with this Act, their losses could be absorbed and that it is possible to restore their total capital ratios and leverage ratios to a level necessary to enable them to continue to comply with the conditions for obtaining an authorisation to provide banking services in accordance with the law governing banking;

3. the need to ensure in resolution proceedings, if the resolution plan anticipates the possibility for certain liabilities to be excluded from the use of the write-down and conversion tool in accordance with Article 102 of this Act or to be transferred in full to a recipient, that the resolution entity has sufficient own funds and other eligible liabilities to absorb losses and to restore its total capital ratio and its leverage ratio to the level necessary to enable it to continue to comply with the conditions for obtaining an authorisation to provide banking services in accordance with the law governing banking;

4. the size, the business model, the funding model and the risk profile of the entity;

5. the extent to which the failure of the entity would have an adverse effect on financial stability, including through contagion to other institutions or entities, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system.

(2) Where the resolution plan provides that resolution actions need to be taken or that the tool of write-down and conversion of capital instruments and eligible liabilities needs to be applied before resolution proceedings are initiated, the minimum requirement for own funds and eligible liabilities shall equal an amount sufficient to ensure that:

1. the losses that are expected to be incurred by the entity are fully absorbed;

2. the resolution entity and its subsidiaries that are resolution entities but are not treated as resolution entities are recapitalised to a level necessary to enable the entity to continue to comply with the conditions for obtaining an authorisation to provide banking services in accordance with the law governing banking, for an appropriate period not longer than one year.

(3) Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings, Banka Slovenije shall assess whether it is justified to limit the minimum requirement for own funds and eligible liabilities for that entity so that it does not exceed an amount sufficient to absorb the losses referred to in point 1 of the previous paragraph. In this assessment Banka Slovenije shall in particular evaluate the limit as regards any possible impact on financial stability and on the risk of contagion to the financial system.

(4) Where Banka Slovenije expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from the use of the write-down and conversion tool pursuant to Article 102 of this Act or might be transferred in full to a recipient under a partial transfer, the minimum requirement for own funds and eligible liabilities shall be met using own funds or other eligible liabilities that are sufficient to:

1. cover the amount of excluded liabilities identified in accordance with Article 102 of this Act;

2. ensure that the conditions referred to in the second and third paragraphs of this article are fulfilled.

(5) Banka Slovenije shall provide reasoning for any decision to impose a minimum requirement for own funds and eligible liabilities, and by applying the criteria referred to in this article shall review its adequacy to reflect any changes in connection with the requirement on the basis of the law governing banking, with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU.

(6) For the purposes of the implementation of Articles 53 and 55 of this Act, the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation 575/2013/EU shall be taken into account with regard to own funds requirements.

Article 53

(Determination of minimum requirement for own funds and eligible liabilities)

(1) For resolution entities the minimum requirement for own funds and eligible liabilities shall be equal to the following amount:

1. for the purpose of determining the minimum requirement for own funds and eligible liabilities expressed in accordance with point 1 of the third paragraph of Article 49 of this Act, the sum of:

* the amount of the losses to be absorbed in resolution that corresponds to the requirements referred to in Article 92(1)(c) of Regulation 575/2013/EU and the requirements pursuant to the law governing banking with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU applying to the resolution entity at the consolidated resolution group level, and
* a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred to in Article 92(1)(c) of Regulation 575/2013/EU and its requirement pursuant to the law governing banking with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU and that applies to it at the consolidated resolution group level after the implementation of the preferred resolution strategy; and

2. for the purpose of determining the minimum requirement for own funds and eligible liabilities expressed in accordance with point 2 of the third paragraph of Article 49 of this Act, the sum of:

* the amount of the losses to be absorbed in resolution that corresponds to the resolution entity’s requirement with regard to the leverage ratio referred to in Article 92(1)(d) of Regulation 575/2013/EU at the consolidated resolution group level, and
* a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its leverage ratio requirement referred to referred to in Article 92(1)(d) of Regulation 575/2013/EU at the consolidated resolution group level after the implementation of the preferred resolution strategy.

(2) The minimum requirement for own funds and eligible liabilities expressed in accordance with point 1 of the third paragraph of Article 49 of this Act shall be determined in percentage terms as the amount calculated in accordance with point 1 of the previous paragraph, divided by the total risk exposure amount.

(3) The minimum requirement for own funds and eligible liabilities expressed in accordance with point 2 of the third paragraph of Article 49 of this Act shall be determined in percentage terms as the amount calculated in accordance with point 2 of the first paragraph of this article, divided by the total risk exposure measure.

(4) In determining an individual requirement referred to in point 2 of the first paragraph of this article, Banka Slovenije shall take account of the requirements referred to in the fourth paragraph of Article 79 of this Act and the conditions for using a resolution financing arrangement established pursuant to Regulation 806/2014/EU.

(5) In determining the recapitalisation amounts referred to in the first paragraph of this article, Banka Slovenije shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and

2. after consulting the competent authority, adjust the amount corresponding to the requirement pursuant to the law governing banking with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

(6) Banka Slovenije may increase the requirement referred to in the second indent of point 1 of the first paragraph of this article by an amount equal to the combined buffer requirement that is to apply after the application of the resolution tools less the amount of the capital conservation buffer that applies to the bank, when such an increase is necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period of no more than one year.

(7) The amount referred to in the previous paragraph shall be adjusted downwards if Banka Slovenije determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the resolution entity and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements established pursuant to Regulation 806/2014/EU. That amount shall be adjusted upwards if Banka Slovenije determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the resolution entity and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements established pursuant to Regulation 806/2014/EU, for an appropriate period of no more than one year.

Article 54

(Additional rules for determining minimum requirement for own funds and eligible liabilities)

(1) For resolution entities that are not subject to Article 92a of Regulation 575/2013/EU and that are part of a resolution group whose total assets exceed EUR 100 billion, the minimum requirement for own funds and eligible liabilities shall be at least equal to:

1. 13.5%, when expressed in accordance with point 1 of the third paragraph of Article 49 of this Act; or

2. 5%, when expressed in accordance with point 2 of the third paragraph of Article 49 of this Act.

(2) The provisions of Articles 50 and 59 of this Act notwithstanding, the resolution entities referred to in the previous paragraph shall meet the requirement referred to in the previous paragraph using own funds, subordinated eligible instruments, or liabilities as referred to in the sixth paragraph of Article 50 of this Act.

(3) Banka Slovenije may decide to apply the requirements referred to in the first and second paragraphs of this article to a resolution entity that is not subject to Article 92a of Regulation 575/2013/EU and that is part of a resolution group whose total assets are less than EUR 100 billion and that Banka Slovenije has assessed as reasonably likely to pose a systemic risk in the event of its failure.

(4) In connection with the decision referred to in the previous paragraph, Banka Slovenije shall also take account of the following:

1. the prevalence of deposits, and the absence of debt instruments, in the funding model;

2. the extent to which access to the capital markets for eligible liabilities is limited;

3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the minimum requirement for own funds and eligible liabilities referred to in Article 57 of this Act.

(5) The absence of a decision pursuant to the third paragraph of this article is without prejudice to any decision adopted pursuant to the ninth paragraph of Article 60 of this Act.

Article 55

(Determination of minimum requirement for own funds and eligible liabilities for entities that are not resolution entities)

(1) For entities that are themselves not resolution entities, the minimum requirement for own funds and eligible liabilities referred to in the second paragraph of Article 52 of this Act shall be equal to the following amount:

1. for the purpose of determining the minimum requirement for own funds and eligible liabilities expressed in accordance with point 1 of the third paragraph of Article 49 of this Act, the sum of:

* the amount of the losses to be absorbed that corresponds to the requirements referred to in Article 92(1)(c) of Regulation 575/2013/EU and the requirements pursuant to the law governing banking with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU applying to the entity, and
* a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred to in Article 92(1)(c) of Regulation 575/2013/EU and its requirement pursuant to the law governing banking with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU and that applies to it after the use of the tool of write-down and conversion of relevant capital instruments and eligible liabilities or after the resolution of the resolution group; and

2. for the purpose of determining the minimum requirement for own funds and eligible liabilities expressed in accordance with point 2 of the third paragraph of Article 49 of this Act, the sum of:

* the amount of the losses to be absorbed that corresponds to the requirement with regard to the leverage ratio referred to in Article 92(1)(d) of Regulation 575/2013/EU that applies to it, and
* a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in Article 92(1)(d) of Regulation 575/2013/EU after the use of the tool of write-down and conversion of relevant capital instruments and eligible liabilities or after the resolution of the resolution group.

(2) The minimum requirement for own funds and eligible liabilities expressed in accordance with point 1 of the third paragraph of Article 49 of this Act shall be determined in percentage terms as the amount calculated in accordance with point 1 of the previous paragraph, divided by the total risk exposure amount.

(3) The minimum requirement for own funds and eligible liabilities expressed in accordance with point 2 of the third paragraph of Article 49 of this Act shall be determined in percentage terms as the amount calculated in accordance with point 2 of the first paragraph of this article, divided by the total risk exposure measure.

(4) In determining an individual requirement referred to in point 2 of the first paragraph of this article, Banka Slovenije shall take account of the requirements referred to in the fourth paragraph of Article 79 of this Act and the conditions for using a resolution financing arrangement established pursuant to Regulation 806/2014/EU.

(5) In determining the recapitalisation amounts referred to in this article, Banka Slovenije shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan; and

2. after consulting the competent authority, adjust the amount corresponding to the requirement pursuant to the law governing banking with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU downwards or upwards to determine the requirement that is to apply to the relevant entity after the use of the tool of write-down and conversion of relevant capital instruments and eligible liabilities in accordance with Article 97 of this Act or after the resolution of the resolution group.

(6) Banka Slovenije may increase the requirement referred to in the second indent of point 1 of the first paragraph of this article by an appropriate amount equal to the combined buffer requirement that is to apply after the use of the tool of write-down and conversion of capital instruments and eligible liabilities in accordance with Article 97 of this Act or after the resolution of the resolution group, less the amount of the capital conservation buffer that applies to the bank, when such an increase is necessary to ensure that after the use of the tool of write-down and conversion of relevant capital instruments and eligible liabilities in accordance with Article 97 of this Act the entity is able to sustain sufficient market confidence for an appropriate period of no more than one year.

(7) The amount referred to in the previous paragraph shall be adjusted downwards if Banka Slovenije determines that it would be feasible and credible for a lower amount to be sufficient, after the use of the tool of write-down and conversion of capital instruments and eligible liabilities in accordance with Article 97 of this Act or after the resolution of the resolution group, to sustain market confidence and to ensure both the continued provision of critical economic functions by the resolution entity and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements established pursuant to Regulation 806/2014/EU. That amount shall be adjusted upwards if Banka Slovenije determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the resolution entity and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements established pursuant to Regulation 806/2014/EU, for an appropriate period of no more than one year.

Article 56

(Determination of minimum requirement for own funds and eligible liabilities for resolution entities of G-SIIs and material subsidiaries)

(1) For a resolution entity that is a global systemically important institution that is defined as a global systemically important institution on a consolidated basis by Banka Slovenije in accordance with the law governing banking and Regulation 1024/2013/EU (hereinafter: G-SII) or part of a G-SII, the minimum requirement for own funds and eligible liabilities shall include:

1. the requirements referred to in Articles 92a and 494 of Regulation 575/2013/EU; and

2. any additional requirement for own funds and eligible liabilities determined by Banka Slovenije specifically in relation to that entity in accordance with the third paragraph of this article.

(2) The minimum requirement for own funds and eligible liabilities for a material subsidiary of a third-country G-SII established in the Republic of Slovenia shall include:

1. the requirements referred to in Articles 92b and 494 of Regulation 575/2013/EU; and

2. any additional requirement for own funds and eligible liabilities determined by Banka Slovenije specifically in relation to that material subsidiary in accordance with the third paragraph of this article, which is to be met using own funds and liabilities that meet the conditions of Articles 58 and 59 and the second and third paragraphs of Article 165 of this Act.

(3) Banka Slovenije shall only impose an additional requirement for own funds and eligible liabilities referred to in point 2 of the first paragraph of this article and point 2 of the previous paragraph if the requirement referred to in point 1 of the first paragraph of this article or point 1 of the previous paragraph does not suffice to meet the conditions referred to in Articles 52 to 55 of this Act, in an amount sufficient to ensure that the conditions referred to in Articles 52 to 55 of this Act are met.

(4) Where multiple G-SII entities belonging to the same G-SII are resolution entities, the amount referred to in the previous paragraph shall be determined having regard for Article 61 of this Act:

1. for each resolution entity;

2. for the EU parent entity as if it was the only G-SII resolution entity.

(5) Banka Slovenije shall provide reasoning for any decision to impose an additional requirement for own funds and eligible liabilities pursuant to point 2 of the first paragraph of this article or point 2 of the second paragraph of this article, and shall review its adequacy to reflect any changes in connection with the requirement on the basis of the law governing banking, with regard to the provision of an additional capital requirement that exceeds the requirement under Regulation 575/2013/EU that applies to the resolution group or the EU material subsidiary of a non-EU G-SII.

Article 57

(Compliance with minimum requirement for own funds and eligible liabilities in connection with resolution entities)

(1) Resolution entities shall comply with the minimum requirement for own funds and eligible liabilities determined in accordance with this Act on a consolidated basis at the level of the resolution group.

(2) Banka Slovenije shall determine the minimum requirement for own funds and eligible liabilities for a resolution entity at the consolidated resolution group level in accordance with Article 61 of this Act, having regard for criteria and conditions set out in Articles 50 to 56 of this Act, and on the basis of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

Article 58

(Compliance with minimum requirement for own funds and eligible liabilities in connection with entities that are not themselves resolution entities)

(1) Banks that are subsidiaries of a resolution entity or a third-country entity but are not themselves resolution entities shall comply with the minimum requirement for own funds and eligible liabilities determined in accordance with Articles 52 to 55 of this Act on an individual basis.

(2) Banka Slovenije may decide to apply the requirement referred to in this article to an entity referred to in points 2, 3 or 4 of the first paragraph of Article 2 of this Act that is a subsidiary of a resolution entity but is not itself a resolution entity.

(3) The first paragraph of this article notwithstanding, EU parent undertakings that are subsidiaries of third-country entities but are not themselves resolution entities shall comply with minimum requirement for own funds and eligible liabilities determined in accordance with Articles 52 to 56 of this Act on a consolidated basis.

(4) The minimum requirement for own funds and eligible liabilities for entities referred to in this article shall be determined in accordance with Articles 61 and 165 of this Act, having regard for criteria and conditions set out in Articles 52 to 55 of this Act. To meet the minimum requirement for own funds and eligible liabilities, the liabilities referred to in the fifth paragraph of this article and the own funds referred to in the sixth paragraph of this article shall be taken into account.

(5) To meet the minimum requirement for own funds and eligible liabilities referred to in the previous paragraph, the following liabilities shall be taken into account:

1. liabilities that are issued to and bought by the entity referred to in the first to third paragraphs of this article, either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity that is subject to this article, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the use of the tool of write-down and conversion of capital instruments and eligible liabilities does not affect the control of the subsidiary by the resolution entity;

2. liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation 575/2013/EU, including the conditions referred to in Article 72b, except for points (b), (c), (k), (l) and (m) of Article 72b(2) and Articles 72b(3) to 72(b)(5) of Regulation 575/2013/EU;

3. liabilities that rank, in normal insolvency proceedings, below liabilities that do not meet the condition referred to in point 1 of this paragraph and that are not eligible for own funds requirements;

4. liabilities to which the tool of write-down and conversion of capital instruments and eligible liabilities can be applied in accordance with this Act in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity;

5. liabilities whose acquisition is not funded directly or indirectly by the entity that is subject to this article;

6. liabilities subject to contractual arrangements or other commitments made by the entity that is the subject of this article that do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early by the entity that is subject to this article, other than in the case of the insolvency or liquidation of that entity;

7. liabilities where the contractual arrangements do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the entity that is subject to this article;

8. liabilities where the level of interest or dividend payments due thereon is not amended on the basis of the credit standing of the entity that is subject to this article or its parent undertaking.

(6) To meet the minimum requirement for own funds and eligible liabilities referred to in the fourth paragraph of this article, the following own funds items shall be taken into account:

1. Common Equity Tier 1 capital; and

2. other own funds items related to instruments that are issued to and bought by:

* entities that are included in the same resolution group, or
* entities that are not included in the same resolution group as long as the use of the tool of write-down and conversion of capital instruments and eligible liabilities does not affect the control of the subsidiary by the resolution entity.

Article 59

(Waiver of minimum requirement for own funds and eligible liabilities in connection with entities that are not themselves resolution entities)

(1) When Banka Slovenije is competent for resolving a subsidiary that is not a resolution entity, it may decide in connection with the aforementioned subsidiary to waive the requirement referred to in the previous article, provided that all of the following conditions are met:

1. the subsidiary and the resolution entity are established in the Republic of Slovenia and are part of the same resolution group;

2. the resolution entity meets the minimum requirement for own funds and eligible liabilities in accordance with Article 57 of this Act;

3. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary in respect of which the conditions for the use of the tool of write-down and conversion of capital instruments and eligible liabilities have been met in accordance with this Act, in particular where resolution action is taken in respect of the resolution entity;

4. the resolution entity satisfies the competent authority’s requirements regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or that the risks in the subsidiary are of no significance;

5. the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary;

6. the resolution entity holds more than 50% of the voting rights attached to shares in the capital of the subsidiary, or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(2) In connection with a subsidiary that is not a resolution entity, Banka Slovenije may also decide to waive the application of the requirement referred to in the previous article to the subsidiary, provided that all of the following conditions are met:

1. the subsidiary and the parent undertaking are established in the Republic of Slovenia and are part of the same resolution group;

2. the parent undertaking complies on a consolidated basis with the minimum requirement for own funds and eligible liabilities;

3. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which the conditions for the use of the tool of write-down and conversion of capital instruments and eligible liabilities have been met in accordance with this Act, in particular where resolution action or the power to write down and convert capital instruments and eligible liabilities is applied in respect of the resolution entity;

4. the parent undertaking satisfies the competent authority’s requirements regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or that the risks in the subsidiary are of no significance;

5. the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

6. the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary, or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(3) Where the conditions set out in points 1 and 2 of the first paragraph of this article are met, Banka Slovenije may permit the subsidiary to meet the minimum requirement for own funds and eligible liabilities in full or in part with a guarantee provided by the resolution entity, which fulfils the following conditions:

1. the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;

2. the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due, or a determination has been made in respect of the subsidiary that it meets the conditions for the use of the tool of write-down and conversion of capital instruments and eligible liabilities in accordance with this Act;

3. the guarantee is collateralised through a financial collateral arrangement as defined in the law governing financial collateral for at least 50% of its amount;

4. the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation 575/2013/EU, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised referred to in the previous point;

5. the collateral backing the guarantee is unencumbered and, in particular, is not used as collateral to back any other guarantee;

6. the collateral has an effective maturity that fulfils the same maturity condition as that referred to in Article 72c(1) of Regulation 575/2013/EU; and

7. there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

(4) For the purposes of point 7 of the previous paragraph, at Banka Slovenije’s request the resolution entity shall provide an independent written and reasoned legal opinion or shall otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

Article 60

(Additional requirements with regard to minimum requirement for own funds and eligible liabilities)

(1) Part of the minimum requirement for own funds and eligible liabilities referred to in Article 57 of this Act equal to 8% of the total liabilities, including own funds, shall be met by using own funds, subordinated eligible instruments, or liabilities as referred to in the sixth paragraph of Article 50 of this Act, if the resolution entity is:

1. a G-SII;

2. an entity referred to in the first paragraph of Article 54 of this Act;

3. an entity referred to in the third paragraph of Article 54 of this Act, to which Banka Slovenije applies the requirements referred to in the first and second paragraphs of Article 54 of this Act.

(2) Banka Slovenije may permit an entity referred to in the previous paragraph to use own funds, subordinated eligible instruments, or liabilities as referred to in the sixth paragraph of Article 50 of this Act to meet the requirement at a level lower than 8% of the total liabilities, including own funds, but greater than the limit amount referred to in the third paragraph of this article, provided that all the conditions set out in Article 72b(3) of Regulation 575/2013/EU are met, having regard for the reduction that is possible under Article 72b(3) of Regulation 575/2013/EU.

(3) The limit amount referred to in the previous paragraph shall be determined using the following formula:

(1- (X1/X2)) x 8% of total liabilities, including own funds,

where:

* X1 is 3.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU; and
* X2 is 18% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU, and the amount of the combined buffer requirement.

(4) For entities referred to in point 2 of the first paragraph of this article, where the application of the second paragraph of this article leads to a requirement greater than 27% of the total risk exposure amount for the resolution entity concerned, Banka Slovenije shall limit the part of the minimum requirement for own funds and eligible liabilities that is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in the sixth paragraph of Article 50 of this Act to an amount equal to 27% of the total risk exposure amount, if it has assessed that:

1. access to the resolution financing arrangement is not considered to be an option for resolving that resolution entity in the resolution plan; or

2. the minimum requirement for own funds and eligible liabilities allows that resolution entity to obtain means to finance resolution from a resolution financing arrangement established pursuant to Regulation 806/2014/EU.

(5) In the assessment referred to in the previous paragraph, Banka Slovenije shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned.

(6) The first to fifth paragraphs of this article notwithstanding, under the conditions referred to in the seventh paragraph of this article Banka Slovenije may decide that the minimum requirement for own funds and eligible liabilities referred to in Article 57 of this Act shall be met by entities referred to in the first paragraph of this article using own funds, subordinated eligible instruments, or liabilities as referred to in the sixth paragraph of Article 50 of this Act to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement, the requirements referred to in Article 92a of Regulation 575/2013/EU and in the first and second paragraphs of Article 54 of this Act and the minimum requirement for own funds and eligible liabilities referred to in Article 57 of this Act, the amount does not exceed the greater of:

1. 8% of the entity’s total liabilities, including own funds, or

2. the amount resulting from the application of the following formula:

A x 2 + B x 2 + C,

where:

* A is the amount resulting from the requirement referred to in Article 92(1)(c) of Regulation 575/2013/EU;
* B is the amount resulting from supervisory measures requiring the entity to meet an additional capital requirement in excess of the requirement under Regulation 575/2013/EU;
* C is the amount resulting from the combined buffer requirement.

(7) Banka Slovenije may exercise the power referred to in the previous paragraph for no more than 30% of the total number of all resolution entities that are entities referred to in the first paragraph of this article for which Banka Slovenije has determined a minimum requirement for own funds and eligible liabilities referred to in Article 57 of this Act, provided that the following conditions are met:

1. substantive impediments to resolvability have been identified in the preceding resolvability assessment and either:

* the entity failed to take alternative measures to reduce or remove the impediments to resolvability by the deadline set by Banka Slovenije in accordance with the fourth paragraph of Article 34 of this Act, or
* the identified substantive impediments cannot be addressed using any of the measures referred to in the fourth paragraph of Article 34 of this Act, and the exercise of the power referred to in the previous paragraph would partially or fully compensate for the negative impact of the substantive impediments on resolvability;

2. Banka Slovenije assesses the feasibility and credibility of the resolution entity’s preferred resolution strategy to be limited, taking into account the entity’s size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure; or

3. the requirement in accordance with the law governing banking that the entity meet an additional capital requirement in excess of the requirement under Regulation 575/2013/EU reflects the fact that the resolution entity is in terms of riskiness among the top 20% of banks for which Banka Slovenije determines the minimum requirement for own funds and eligible liabilities.

(8) For the purposes of the percentages referred to in the previous paragraph, Banka Slovenije shall round the number resulting from the calculation up to the closest whole number.

(9) Banka Slovenije may decide for resolution entities that are not entities referred to in the first paragraph of this article that a part of the minimum requirement for own funds and eligible liabilities up to the greater of 8% of the total liabilities, including own funds, of the entity and the limit amount calculated using the formula referred to in the third paragraph of this article, shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in the sixth paragraph of Article 50 of this Act, provided that the following conditions are met:

1. non-subordinated liabilities referred to in the first, second and third paragraphs of Article 50 of this Act have the same priority ranking in the insolvency hierarchy as certain liabilities that in accordance with the second paragraph of Article 101 or Article 102 of this Act are excluded from the application of the bail-in tool;

2. there is a risk that, as a result of a planned application of the bail-in tool, creditors whose claims arise from those non-subordinated liabilities that are not excluded in accordance with the second paragraph of Article 101 or Article 102 of this Act incur greater losses than they would incur in a winding-up under normal insolvency proceedings;

3. the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that the creditors referred to in the previous point do not incur losses above the level of losses that they would otherwise have incurred in a winding-up under normal insolvency proceedings.

(10) Where Banka Slovenije determines that, within a class of liabilities that includes eligible liabilities, the amount of the liabilities that are excluded or are reasonably likely to be excluded from the application of the tool of write-down and conversion of eligible liabilities in accordance with the second paragraph of Article 101 or Article 102 of this Act totals more than 10% of that class, it shall assess the risk referred to in point 2 of the previous paragraph.

(11) For the purposes of this article, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights. The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirements pursuant to this article.

(12) In taking the decisions referred to in the sixth and ninth paragraphs of this article, Banka Slovenije shall consult the competent authorities, and shall also take into account:

1. the depth of the market for the resolution entity’s own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;

2. the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation 575/2013/EU that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in the sixth and ninth paragraphs of this article;

3. the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of Regulation 575/2013/EU, including the conditions referred to in Article 72b, other than Article 72b(2)(d);

4. whether the amount of liabilities that are excluded from the use of the write-down and conversion tool in accordance with the second paragraph of Article 101 or Article 102 of this Act and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity. Where the amount of excluded liabilities does not exceed 5% of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as not being significant. Above that threshold, the significance of the excluded liabilities shall be assessed by Banka Slovenije;

5. the resolution entity’s business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy; and

6. the impact of possible restructuring costs on the resolution entity’s recapitalisation.

Article 61

(Procedure for determining minimum requirement for own funds and eligible liabilities)

(1) When acting as the resolution authority of a resolution entity, the group-level resolution authority, or the resolution authority responsible for the subsidiaries of a resolution group that are subject to the requirement referred to in Articles 58 or 59 of this Act on an individual basis, Banka Slovenije shall, in conjunction with other resolution authorities responsible for group entities, do everything within its power to reach a joint decision on the following in accordance with Articles 57 to 59 of this Act within four months of the initiation of the procedure for determining the minimum requirement for own funds and eligible liabilities:

1. the amount of the minimum requirement for own funds and eligible liabilities applied at the consolidated resolution group level for each resolution entity; and

2. the amount of the minimum requirement for own funds and eligible liabilities applied on an individual basis to each entity of a resolution group that is not a resolution entity.

(2) Banka Slovenije shall send the reasoned joint decision referred to in the previous paragraph to:

1. the resolution entity, when Banka Slovenije is its resolution authority;

2. entities in the resolution group that are not resolution entities, when Banka Slovenije is their resolution authority;

3. EU parent undertakings of the group, when Banka Slovenije is their resolution authority, if the EU parent undertaking is not a resolution entity in the same resolution group.

(3) The joint decision taken in accordance with this article may provide that, where consistent with the resolution strategy and sufficient instruments complying with the requirements of the fifth and sixth paragraphs of Article 58 of this Act have not been bought directly or indirectly by the resolution entity, the minimum requirement for own funds and eligible liabilities is partially met by the subsidiary concerned with instruments issued to and bought by entities that are not part of the resolution group.

(4) Where more than one G-SII entity belonging to the same G-SII is defined as a resolution entity, the resolution authorities referred to in the first paragraph of this article may also decide, consistent with the G-SII’s resolution strategy, on the application of Article 72e of Regulation 575/2013/EU and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in point 1 of the fourth paragraph of Article 56 of this Act and Article 12a of Regulation 575/2013/EU for individual resolution entities and the sum of the amounts referred to in point 2 of the fourth paragraph of Article 56 of this Act and Article 12a of Regulation 575/2013/EU. The adjustments:

1. may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States, by adjusting the level of the minimum requirement for own funds and eligible liabilities;

2. shall not be applied to eliminate differences resulting from exposures between resolution groups.

(5) The sum of the amounts referred to in point 1 of the fourth paragraph of Article 56 of this Act and Article 12a of Regulation 575/2013/EU for individual resolution entities shall not be lower than the sum of the amounts referred to in point 2 of the fourth paragraph of Article 56 of this Act and Article 12a of Regulation 575/2013/EU.

(6) Where a joint decision referred to in the first paragraph of this article is not taken within four months because of a disagreement concerning the consolidated minimum requirement for own funds and eligible liabilities referred to in Article 57 of this Act for a resolution group, a decision shall be taken on that requirement by Banka Slovenije when it is the resolution authority of the resolution entity, after having duly taken into account:

1. the assessment of entities of the resolution group that are not resolution entities performed by other relevant resolution authorities;

2. the opinion of the group-level resolution authority, where it is not Banka Slovenije.

(7) Where, before the end of the four-month deadline period, any of the resolution authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation 1093/2010/EU, Banka Slovenije shall defer its decision referred to in the previous paragraph and await any decision that the European Banking Authority may take in accordance with Article 19(3) of Regulation 1093/2010/EU, and shall then take its decision in accordance with the decision of the European Banking Authority, having regard for points 1 and 2 of the previous paragraph. The matter may not be referred to the European Banking Authority after the end of the four-month deadline period, or after a joint decision has been reached. If the European Banking Authority fails to make a decision within one month of it being referred, Banka Slovenije shall make a decision in accordance with the previous paragraph.

(8) Where a joint decision referred to in the first paragraph of this article is not taken within four months because of a disagreement concerning the level of the requirement referred to in Articles 58 or 59 of this Act to be applied to any entity of a resolution group on an individual basis, the decision shall be taken by Banka Slovenije when it is the resolution authority of that entity, having due regard for:

1. the views and reservations expressed in writing by another resolution authority of a resolution entity; and

2. the views and reservations expressed in writing by the group-level resolution authority, where it is not Banka Slovenije.

(9) Where, before the end of the four-month deadline period, any resolution authority of a resolution entity or the group-level resolution authority has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation 1093/2010/EU, Banka Slovenije shall, when it is the resolution authority of a subsidiary on an individual basis, defer its decision referred to in the previous paragraph and await any decision that the European Banking Authority may take in accordance with Article 19(3) of Regulation 1093/2010/EU, and shall then take its decision in accordance with the decision of the European Banking Authority, having regard for points 1 and 2 of the previous paragraph. The matter may not be referred to the European Banking Authority after the end of the four-month deadline period, or after a joint decision has been reached. If the European Banking Authority fails to make a decision within one month of it being referred, Banka Slovenije shall make a decision in accordance with the previous paragraph.

(10) When it is the resolution authority of a resolution entity or the group-level resolution authority, Banka Slovenije may not refer the matter to the European Banking Authority for binding mediation where the level set by the competent resolution authority of the subsidiary:

1. is within 2% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU; and

2. complies with Article 55 of this Act.

(11) Where a joint decision referred to in the first paragraph of this article is not taken within four months because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group’s entities on an individual basis, Banka Slovenije shall, when it is the resolution authority of an entity, take a decision:

1. on the level of the consolidated minimum requirement for own funds and eligible liabilities to be applied to the resolution group in accordance with the sixth and seventh paragraphs of this article;

2. on the level of the minimum requirement for own funds and eligible liabilities to be applied to the resolution group’s subsidiaries on an individual basis in accordance with the eighth and ninth paragraphs of this article.

(12) The joint decision referred to in the first paragraph of this article and any decisions taken by resolution authorities in accordance with the sixth to eleventh paragraphs of this article in the absence of a joint decision shall be binding on Banka Slovenije.

(13) Banka Slovenije shall guarantee that the joint decision and any decisions taken in the absence of a joint decision are reviewed and, where relevant, updated on a regular basis.

(14) Banka Slovenije shall verify that resolution entities meet the minimum requirement for own funds and eligible liabilities, and shall take any decision pursuant to this article in parallel with the development and the maintenance of resolution plans.

Article 62

(Reporting and public disclosure of minimum requirement for own funds and eligible liabilities)

(1) Resolution entities subject to the minimum requirement for own funds and eligible liabilities shall report to Banka Slovenije on the following:

1. the amounts of own funds that, where applicable, meet the conditions referred to in the sixth paragraph of Article 58 of this Act, and the amounts of eligible liabilities, and the expression of those amounts in accordance with the third paragraph of Article 49 of this Act after any applicable deductions in accordance with Articles 72e to 72j of Regulation 575/2013/EU;

2. the amounts of other bail-inable liabilities in accordance with this Act;

3. for the items referred to in points 1 and 2 of this paragraph:

* their composition, including their maturity profile,
* their ranking in normal insolvency proceedings, and
* whether they are governed by the laws of a third country and, if so, which third country, and whether they contain the contractual terms referred to in Article 103 of this Act, and Articles 52(1)(p), 52(1)(q), 63(n) and 63(o) of Regulation 575/2013/EU.

(2) The obligation to report on the amounts of other liabilities referred to in point 2 of the previous paragraph shall not apply to entities that, at the date of the reporting of that information, hold amounts of own funds and eligible liabilities of at least 150% of the minimum requirement for own funds and eligible liabilities as calculated in accordance with point 1 of the previous paragraph.

(3) Resolution entities shall report the information referred to in the first paragraph of this article as follows:

1. the information referred to in point 1 of the first paragraph of this article: on at least a semi-annual basis, and

2. the information referred to in points 2 and 3 of the first paragraph of this article: on at least an annual basis.

(4) The previous paragraph notwithstanding, Banka Slovenije may stipulate the reporting of the information referred to in the first paragraph of this article on a more frequent basis.

(5) Resolution entities referred to in the first paragraph of this article shall publish the following information on at least an annual basis:

1. the amounts of own funds that, where applicable, meet the conditions referred to in the sixth paragraph of Article 58 of this Act, and the amounts of eligible liabilities;

2. the composition of the items referred to in the previous point, including their maturity profile and their ranking in normal insolvency proceedings; and

3. the applicable minimum requirement for own funds and eligible liabilities expressed as a percentage of the entity’s total exposure measure calculated in accordance with Articles 429 and 429a of Regulation 575/2013/EU.

(6) Banka Slovenije may decide that the reporting and disclosure requirements under this article do not apply to entities whose resolution plan provides that the entity is to be wound up under normal insolvency proceedings.

(7) Where resolution actions have been implemented or the tool of write-down and conversion of capital instruments and eligible liabilities has been applied in connection with a resolution entity, the public disclosure requirements referred to in the fifth paragraph of this article shall apply from the deadline to comply with the minimum requirement for own funds and eligible liabilities in accordance with Article 64 of this Act.

(8) Banka Slovenije shall inform the European Banking Authority of the minimum requirement for own funds and eligible liabilities that has been set, in accordance with Articles 57, 58 and 59 of this Act, for each resolution entity under its jurisdiction.

Article 63

(Breach of minimum requirement for capital and eligible liabilities)

(1) Any breach of the minimum requirement for own funds and eligible liabilities at resolution entities shall be addressed by Banka Slovenije on the basis of at least one of the following elements:

1. powers to prohibit distributions and to reduce or remove impediments to resolvability (subchapter 2.2.1 of this Act);

2. measures for remedying breaches of the requirements for bank resolvability (subchapter 2.2.6 of this Act);

3. supervisory measures and early intervention measures pursuant to the law governing banking; and

4. misdemeanours proceedings and penalties pursuant to this Act or the law governing banking.

(2) In cases referred to in the previous paragraph, Banka Slovenije may also carry out an assessment of whether the resolution entity is failing or is likely to fail.

(3) Banka Slovenije shall consult the competent supervisory authorities for the resolution entities concerned in connection with the exercise of powers in cases referred to in the first paragraph of this article.

Article 64

(Post-resolution arrangements)

(1) Other provisions of this Act notwithstanding, the minimum requirement for own funds and eligible liabilities determined in Article 54 of this Act shall not apply within two years of the following:

1. the date on which Banka Slovenije applied the tool of write-down and conversion of capital instruments and eligible liabilities or the tool of write-down and conversion of other bail-inable liabilities in relation to a resolution entity; or

2. the date on which the resolution entity put in place an alternative private sector measure by which capital instruments and other liabilities were written down or converted into instruments of ownership.

(2) The requirements referred to in Article 54 and the ninth to eleventh paragraphs of Article 60 of this Act shall not apply within three years of the date on which the resolution entity or the group of which the resolution entity is part was identified as a G-SII, or three years of the date on which the resolution entity started to be in the situation referred to in Article 54 of this Act.

(3) In the cases referred to in the first and second paragraphs of this article, Banka Slovenije shall determine an appropriate transitional period within which resolution entities must comply with the minimum requirement for own funds and eligible liabilities in accordance with the requirements determined in accordance with Articles 57 to 60 of this Act.

(4) For the purposes of this article, Banka Slovenije shall communicate to the resolution entity a planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of the loss-absorbing and recapitalisation capacity of the institution or entity.

(5) In determining the transitional period, Banka Slovenije shall take account of:

1. the prevalence of deposits and the absence of debt instruments in the funding model;

2. the access to the capital markets for eligible liabilities;

3. the extent to which resolution entities rely on Common Equity Tier 1 capital to meet the requirement in accordance with Article 57 of this Act.

(6) The third and fourth paragraphs of this article notwithstanding, Banka Slovenije may at any time revise either the transitional period or any planned minimum requirement for own funds and eligible liabilities.

2.2.6 Measures for remedying breaches of the requirements for bank resolvability

Article 65

(Order to remedy breaches)

(1) If Banka Slovenije establishes that breaches of this Act exist or are likely to exist at a resolution entity regarding the conditions and requirements for bank resolvability, including the requirements determined by Banka Slovenije in accordance with this Act, Banka Slovenije shall issue an order requiring the resolution entity or its responsible person to cease certain acts or implement certain measures to remedy the breaches identified or to prevent the occurrence of a breach by a stipulated deadline (hereinafter: an order to remedy breaches).

(2) In the order to remedy breaches, Banka Slovenije shall set a deadline by which the resolution entity or its responsible person shall submit a written report describing the measures adopted and presenting appropriate evidence of the remediation or prevention of breaches.

Article 66

(Additional measures)

(1) By way of an order to remedy breaches, Banka Slovenije may impose on the resolution entity one or more additional measures for remedying breaches when the following breaches exist regarding the resolution entity:

1. the resolution entity failed to provide the information required pursuant to this Act or Regulation 806/2014/EU with regard to the formulation or updating of a resolution plan or resolvability assessment;

2. the management body of the resolution entity failed to notify Banka Slovenije that the resolution entity is failing or is likely to fail, in accordance with Article 70 of this Act.

(2) The additional measures referred to in the previous paragraph shall include:

1. a temporary prohibition against the exercise of powers regarding one or all members of the management body or senior management of the resolution entity or other persons who are responsible at the resolution entity for the performance of certain tasks or the exercise of certain powers with regard to which the breaches have been identified;

2. a public announcement of the type of breach and the identity of the resolution entity and the person responsible published in at least one daily newspaper or other medium that is published or available to the public throughout the Republic of Slovenia.

Article 67

(Disclosure of information on measures imposed and identity of perpetrator)

Banka Slovenije shall disclose information on the measures imposed and the identity of the perpetrator in accordance with the provisions of the law governing banking determining the rules for disclosing information on measures imposed and the identity of perpetrators.

2.3 Joint provisions on the application of resolution tools

2.3.1 Conditions for resolution

Article 68

(Conditions for resolution)

(1) Banka Slovenije shall only apply resolution actions in relation to a bank if the following conditions are met:

1. the bank is failing or is likely to fail for reasons referred to in Article 69 of this Act;

2. no circumstances exist to indicate that the reasons for the bank’s failure are likely to be eliminated within the applicable time limit, in particular taking into account alternative private sector measures and supervisory measures, including early intervention in accordance with the law governing banking and the write-down or conversion of capital instruments and eligible liabilities in accordance with this Act; and

3. resolution actions are necessary to protect the public interest.

(2) The finding of Banka Slovenije during its performance of supervisory tasks, or of the European Central Bank when it is responsible for supervision of the bank in accordance with Regulation 1024/2013/EU, that reasons for the bank’s failure exist as provided in Article 69 of this Act shall be taken into account for the purpose of determining the fulfilment of the conditions referred to in point 1 of the previous paragraph.

(3) The prior application of early intervention measures or other supervisory measures under the law governing banking shall not be required for the purpose of determining the fulfilment of the conditions referred to in point 2 of the first paragraph of this article.

(4) For the purpose of determining the fulfilment of the conditions referred to in point 3 of the first paragraph of this article, it shall be considered that a resolution action is in the public interest if it is proportionate and necessary for the achievement of one or more of the resolution objectives referred to in Article 27 of this Act and if these objectives could not be achieved to the same extent in compulsory winding-up proceedings.

Article 69

(Reasons for failure)

(1) For the purpose of deciding on the application of resolution actions pursuant to the previous article, it shall be considered that a bank is failing or is likely to fail if during the supervision of the bank Banka Slovenije, or the European Central Bank whenever it performs the supervisory tasks that it is responsible for under Regulation 1024/2013/EU, establishes one or more of the following:

1. grounds exist for the withdrawal of the authorisation to provide banking services in accordance with the law governing banking, or there is objective evidence that such grounds will exist in the near future, in particular, if the bank has incurred or will incur losses that will deplete all or the majority of its capital;

2. the value of the bank’s assets is less than its liabilities or there is objective evidence that such grounds will exist in the near future;

3. the bank is unable to pay its debts or other liabilities as they fall due or there is objective evidence that such grounds will exist in the near future;

4. the bank requires extraordinary public financial support, except when such support is provided in order to prevent a serious disturbance in the economy and preserve the stability of the financial system in the Republic of Slovenia and is in the form of:

* a State guarantee to back liquidity facilities granted to the bank by Banka Slovenije;
* a State guarantee of newly issued liabilities of the bank;
* an injection of own funds or the purchase of capital instruments of the bank at prices and on terms that do not confer an advantage upon the bank, with regard to which the circumstances referred to in points 1 to 3 of this paragraph are not present and the conditions for the application of the tool of write-down and conversion of capital instruments and eligible liabilities in accordance with this Act are not met at the time the paying-in is granted.

(2) The measures referred to in point 4 of the previous paragraph shall not be considered as a reason for the bank’s failure if the following conditions are met:

1. the measures are applied temporarily and as a precaution and their effects are proportionate to the need in order to prevent a serious disturbance in the economy and maintain the stability of the financial system;

2. the measures are applied to a solvent bank in accordance with the EU state aid rules;

3. the measures are not applied in order to cover losses the bank has incurred or is likely to incur in the near future;

4. the measures for the injection of own funds or capital instruments referred to in the third indent of point 4 of the previous paragraph are applied exclusively in order to address a capital shortfall established in the stress tests, asset quality reviews or similar exercises conducted by Banka Slovenije, the European Central Bank or the European Banking Authority in accordance with their competences under the law governing banking and Regulation 1024/2013/EU.

(3) For the purpose of deciding on the application of resolution actions to a resolution entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act, it shall be considered that a resolution entity is failing or is likely to fail if at least one of the circumstances referred to in the first paragraph of this article is present at the entity.

(4) When circumstances indicating the failure of a group are being determined in accordance with this Act in order to decide on the application of resolution actions, it shall be considered that a group is failing or is likely to fail if it breaches prudential requirements on a consolidated basis or if there is objective evidence that it will breach these requirements in the near future, which would justify action by the competent authorities, in particular if the group has incurred or will incur losses that will deplete all or the majority of its capital.

Article 70

(Duty to give notice of and report on reasons for failure)

(1) The management body of a bank or other entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act shall immediately notify Banka Slovenije if it considers that the bank or other entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act is failing or is likely to fail, taking into account the reasons referred to in the previous article.

(2) At the request of Banka Slovenije, the banks and other entities referred to in points 2 to 4 of the first paragraph of Article 2 of this Act shall provide reports, information and documentation related to the circumstances referred to in the previous article. Banka Slovenije may also request the relevant reports, information and documentation from the members of the management body of and persons employed by the bank or entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act.

Article 71

(Contact with potential purchasers)

(1) If Banka Slovenije identifies conditions in connection with a bank owing to which it could via an order require the bank or the management body to implement early intervention measures pursuant to law governing banking, it may require the bank to establish contact with potential purchasers who would be willing to participate in the resolution of the bank having regard for the conditions referred to in the third to fifth paragraphs of Article 120 of this Act.

(2) In so doing the bank shall ensure that the potential purchaser is bound by the duty to protect the confidentiality of all information obtained in connection with resolution or compulsory winding-up in accordance with Articles 18 and 19 of this Act.

Article 72

(Notifying other authorities of occurrence of reasons for failure)

(1) When Banka Slovenije finds that a resolution entity is failing or is likely to fail and no circumstances exist to indicate that the reasons for the failure are likely to be eliminated within the applicable time limit, in particular having regard for the alternative measures of the private sector and supervisory measures, including early intervention in accordance with the law governing banking and the write-down or conversion of relevant capital instruments and eligible liabilities in accordance with this Act, it shall immediately inform the following authorities of its finding:

1. the agency responsible for financial markets, when it is responsible for supervising an investment firm;

2. the Single Resolution Board, when it is responsible for exercising powers and tasks related to resolution pursuant to Regulation 806/2014/EU or when involvement of the resolution financing arrangements is required under Regulation 806/2014/EU;

3. the European Central Bank;

4. the competent authority and the resolution authority of the Member State where the branch of the bank or other entity is established;

5. the Macroprudential Board and the European Systemic Risk Board;

6. the competent ministry.

(2) If Banka Slovenije finds that circumstances referred to in the previous paragraph are present with regard to a credit institution or entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act established in another Member State, it shall immediately inform the following authorities of its finding:

1. the competent authority and the consolidating supervisor;

2. the resolution authority of the institution or entity and, when applicable, the group-level resolution authority;

3. the competent authority of the country where the branch of the institution or entity concerned is established.

(3) With regard to the provision of the information referred to in the first and second paragraphs of this article, Banka Slovenije shall ensure that the confidentiality of information is appropriately protected.

Article 73

(Conditions for resolution of financial institutions and holding companies)

(1) Banka Slovenije may take resolution actions in relation to a financial institution referred to in point 2 of the first paragraph of Article 2 of this Act if the conditions for resolution referred to in Article 68 of this Act are fulfilled in relation to this financial institution and also in relation to the parent undertaking supervised by the competent authority on a consolidated basis.

(2) Banka Slovenije may take resolution actions in relation to a holding company referred to in points 3 or 4 of the first paragraph of Article 2 of this Act if the conditions for resolution referred to in Article 68 of this Act are fulfilled in relation to the holding company.

(3) Where the subsidiary credit institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, the resolution plan shall provide that the intermediate financial holding company is identified as a resolution entity. Banka Slovenije shall ensure that resolution actions for the purposes of group resolution are taken in relation to the intermediate financial holding company, and not in relation to the mixed-activity holding company.

(4) Having regard for the previous paragraph, and notwithstanding that the holding company referred to in points 3 or 4 of the first paragraph of Article 2 of this Act does not fulfil the conditions referred to in Article 68 of this Act, Banka Slovenije may take resolution actions in relation to this holding company if all of the following conditions are met:

1. the conditions for resolution referred to in Article 68 of this Act are fulfilled in relation to one or more subsidiary credit institutions established in a Member State;

2. the balance of the assets and liabilities of the subsidiary credit institutions referred to in the previous point is such that their failure threatens the group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiary credit institutions or for the resolution of the relevant resolution group as a whole;

3. the holding company is defined as a resolution entity.

(5) With regard to the resolution of a holding company referred to in points 3 or 4 of the first paragraph of Article 2 of this Act, Banka Slovenije may, in accordance with the second and fourth paragraphs of this article and on the basis of prior agreement with the resolution authorities of the other Member States responsible for the resolution of the subsidiary institutions or holding companies established in these Member States, decide that intra-group capital or loss transfers between the entities, including the exercise of write-down or conversion powers, be disregarded in the assessment of whether the conditions for resolution are fulfilled with regard to one or more subsidiary institutions.

Article 74

(Winding-up proceedings of resolution entities)

(1) When Banka Slovenije as the resolution authority assesses that the conditions for resolution referred to in points 1 and 2 of the first paragraph of Article 68 of this Act have been met in relation to a bank, but resolution actions at the bank or resolution entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act would not meet the resolution objectives referred to in point 3 of the first paragraph of Article 27 of this Act with regard to the protection of public funds by minimising reliance on extraordinary public financial support, it shall initiate compulsory winding-up proceedings in connection with the bank pursuant to this Act.

(2) If, in the case referred to in the previous paragraph, reasons for failure referred to in the third paragraph of Article 69 of this Act exist at a resolution entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act, Banka Slovenije shall motion to the court that in connection with that entity it initiate bankruptcy proceedings pursuant to law governing financial operations, insolvency proceedings and compulsory winding-up.

(3) Banka Slovenije shall establish the reasons for failure at a resolution entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act via a decision. Notwithstanding other provisions of this Act, the provisions of the law governing banking with regard to the decision-making procedure, the effects of the decision, and judicial review proceedings in connection with a Banka Slovenije decision in supervisory procedure shall apply to the decision-making procedure, the effects of the decision, and judicial review proceedings in connection with a decision referred to in the first sentence of this paragraph.

(4) Banka Slovenije shall lodge a motion to initiate bankruptcy proceedings in connection with a resolution entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act with the competent court on the day of issuance of the decision referred to in the previous paragraph, attaching the decision to the motion.

(5) The court shall issue the decision to initiate bankruptcy proceedings without re-examination of the conditions for initiating bankruptcy proceedings without delay, by no later than the business day after the date of receipt of the motion referred to in the second paragraph of this article. No appeal shall be allowed against the decision to initiate bankruptcy proceedings.

(6) Banka Slovenije shall be exempt from administrative fees during bankruptcy proceedings initiated by the court in response to the motion referred to in the first and second paragraphs of this article.

Article 75

(Joint decision regarding fulfilment of conditions for resolution in relation to subsidiary)

(1) If Banka Slovenije, acting as the resolution authority of a subsidiary, finds that the subsidiary fulfils the conditions for resolution referred to in the first paragraph of Articles 68 or 73 of this Act, it shall provide the following information to the group-level resolution authority, the consolidating supervisor and the members of the resolution college responsible for the group concerned:

1. the finding that the subsidiary fulfils the resolution conditions;

2. information on the resolution actions or measures within normal insolvency proceedings that it intends to apply to the subsidiary.

(2) Banka Slovenije, acting as the resolution authority of the subsidiary, shall decide on the start of resolution and the application of the resolution actions of which it has informed the relevant authorities in accordance with the previous paragraph when:

1. the group-level resolution authority, after consulting other resolution college members, assesses that it is not likely that the effects of the envisaged resolution actions or measures within normal insolvency proceedings would give rise to reasons for the resolution of other entities in the group established in another Member State; or

2. the group-level resolution authority fails to provide the assessment referred to in the previous point within 24 hours or an agreed longer period after receiving the information referred to in the previous paragraph.

(3) If Banka Slovenije, acting as the group-level resolution authority, receives from the resolution authority of another Member State the information regarding the circumstances referred to in the first paragraph of this article concerning a subsidiary established in that Member State, it shall, after consulting other resolution college members, assess the consequences of the planned resolution actions or measures within normal insolvency proceedings for the group and its entities established in another Member State, in particular, whether the effects would cause the occurrence of reasons for resolution with regard to a group entity established in another Member State.

(4) If Banka Slovenije, acting as the group-level resolution authority, after consulting other resolution college members, assesses that the effects of the measures planned by the resolution authority of a subsidiary are not likely to cause the occurrence of reasons for resolution with regard to a group entity established in another Member State, it shall inform the resolution authority that submitted the notification accordingly.

(5) If Banka Slovenije, acting as the group-level resolution authority, after consulting other resolution college members, assesses that the effects of the measures planned by the resolution authority of a subsidiary are likely to cause the occurrence of reasons for resolution with regard to a group entity established in another Member State, it shall submit to the resolution college a group resolution scheme proposal in accordance with Article 77 of this Act within 24 hours of receiving the information referred to in the third paragraph of this article. The time limit for the submission of the resolution scheme proposal may be extended with the consent of the resolution authority of the subsidiary that provided the information.

Article 76

(Joint decision regarding fulfilment of conditions for resolution in relation to parent undertaking)

(1) If Banka Slovenije, acting as the group-level resolution authority, assesses that an EU parent undertaking fulfils the conditions for resolution referred to in the first paragraph of Articles 68 or 73 of this Act, it shall immediately provide the following information to the resolution authorities that are resolution college members:

1. the finding that the parent undertaking fulfils the resolution conditions;

2. information on the resolution actions or measures within normal insolvency proceedings that it intends to apply to the parent undertaking.

(2) The actions and measures referred to in point 2 of the previous paragraph may also include the group resolution scheme proposal, formulated in accordance with Article 77 of this Act, in any of the following cases:

1. owing to the planned resolution actions or other measures at parent level, the conditions for resolution are likely to be fulfilled with regard to a group entity established in another Member State;

2. resolution actions or other measures at parent level are not sufficient to stabilise the situation or are not likely to provide an adequate outcome;

3. the competent resolution authority of a subsidiary in the group finds that one or more subsidiaries fulfil the resolution conditions;

4. the subsidiaries in the group will benefit from the resolution actions or other measures at the parent level, therefore the application of the group resolution scheme is an appropriate solution.

(3) If the actions and measures referred to in the first paragraph of this article do not include the group resolution scheme, Banka Slovenije, acting as the group-level resolution authority, shall, after consulting the resolution college members, adopt a decision on the actions and measures. In its decision, Banka Slovenije shall take into account the following:

1. the existing resolution plans, and it shall follow them, unless the resolution authorities of the subsidiaries assess, taking into account the circumstances of the case, that the resolution objectives will be achieved more easily by taking actions that are not provided for in the resolution plans; and

2. the financial stability of the Member States concerned.

(4) In the case of the information referred to in the first paragraph of this article, Banka Slovenije, acting as the resolution authority of a subsidiary within the resolution college during consultation with the competent group-level resolution authority and the adoption of a joint decision on the group resolution scheme, when it is proposed, shall take into account the possible effects of the planned measures on the subsidiaries established in the Republic of Slovenia and shall propose appropriate measures to eliminate or reduce any adverse effects of the measures implemented at the parent level on the functioning of the financial system in the Republic of Slovenia.

Article 77

(Group resolution scheme)

(1) A group resolution scheme shall be adopted in the form of a joint decision of the group-level resolution authority and the resolution authorities of other Member States responsible for the subsidiaries included in the group resolution scheme and shall:

1. take into account the existing resolution plans for individual group entities, unless the resolution authorities assess, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions not envisaged in the resolution plans;

2. present resolution actions to be carried out by individual resolution authorities with regard to the EU parent undertaking or certain group entities in order to achieve the resolution objectives;

3. explain the method of coordinating resolution actions; and

4. determine a financial plan that takes into account the group resolution plan, the principles for sharing responsibility for financing the resolution actions, including the application of the resolution financing arrangements.

(2) If Banka Slovenije, acting as the resolution authority of a subsidiary in a group, does not agree with the group resolution scheme proposed by the group-level resolution authority or if it considers that, in addition to the measures proposed in the group resolution scheme, other measures are also needed with regard to certain entities in the group for reasons of financial stability, it shall set out in detail the reasons for disagreeing with the group resolution scheme. In stating the reasons, Banka Slovenije shall take into account the possible impact on financial stability in the Republic of Slovenia and the possible effects of the measures on other entities in the group with regard to the existing resolution plans. Banka Slovenije shall submit the reasons to the group-level resolution authority and other resolution authorities covered by the group resolution scheme and inform them of the measures that it wishes to adopt.

(3) If Banka Slovenije and other resolution authorities responsible for subsidiaries in a group do not agree with the group resolution scheme proposed by the group-level resolution authority, Banka Slovenije may, together with other resolution authorities, adopt a joint decision on the group resolution scheme that covers the entities established in these Member States. Banka Slovenije and other competent resolution authorities may submit to the European Banking Authority a request for assistance in the adoption of a joint decision in accordance with Article 19 of Regulation 1093/2010/EU.

(4) When a group resolution scheme is not applied and resolution authorities implement resolution actions in relation to any group entity, Banka Slovenije shall cooperate, within the resolution college, with the resolution authorities that have adopted the resolution actions with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

(5) Banka Slovenije shall inform the members of the resolution college regularly and in full of the progress made in the implementation of resolution actions.

Article 78

(Compliance with decisions on group resolution scheme)

(1) Banka Slovenije shall consider as final the joint decisions adopted in accordance with the second and fourth paragraphs of the previous article and the decisions adopted by other resolution authorities if a joint decision has not been adopted.

(2) Banka Slovenije shall implement any measures under the decisions referred to in the previous paragraph without delay and with due regard to their urgency.

Article 79

(Conditions for application of national measures for ensuring stability of financial system)

(1) The national measures that, in accordance with regulations, enable extraordinary public financial support aimed at ensuring the stability of the financial system, which is granted to entities within resolution actions or direct measures in order to prevent the failure of the resolution entity, shall be implemented through close cooperation between the competent ministry or the Government and Banka Slovenije.

(2) The measures referred to in the previous paragraph shall be used as a last resort, after having assessed and exploited the other resolution tools to the maximum extent practicable, on the basis of a decision adopted in accordance with regulations by the competent ministry or the Government, after consulting Banka Slovenije.

(3) The measures referred to in the first paragraph of this article shall only be implemented if the conditions for resolution are met with regard to the resolution entity, and if the competent ministry or the Government and Banka Slovenije assess that, in addition, at least one of the following conditions is met:

1. the application of resolution tools would not suffice to prevent a significant adverse impact on financial stability; or

2. the application of resolution tools would not suffice to protect the public interest, when the resolution entity has already received emergency liquidity assistance from Banka Slovenije.

(4) In the extraordinary situation of a systemic crisis, Banka Slovenije shall propose that the competent ministry apply national measures for ensuring the stability of the financial system. The national measures for ensuring the stability of the financial system may only be applied if, on the basis of actions for resolution by means of the write-down and conversion of capital instruments and eligible liabilities, by means of the write-down and conversion of other bail-inable liabilities, or by means of the application of other measures contributing to resolution, the shareholders, the holders of other instruments of ownership and the holders of other capital instruments and eligible liabilities provide a prior contribution in order to ensure the capital necessary for resolution in the amount of at least 8% of the total liabilities (including own funds) of the resolution entity.

(5) A preliminary valuation carried out in accordance with the first paragraph of Article 80 of this Act shall be taken into account in determining the required minimum contribution referred to in the previous paragraph.

(6) National measures for ensuring the stability of the financial system that, having regard for the TFEU, constitute state aid may be implemented when the European Commission issues a conditional, temporary or final decision on the compatibility of the application of such measures or aid with the internal market of the European Union.

2.3.2 Preliminary valuation

Article 80

(Preliminary valuation)

(1) Before deciding on the application of resolution actions, Banka Slovenije shall obtain:

1. an independent assessment of the value of the assets and liabilities of the resolution entity (hereinafter: independent valuation) produced by an independent expert appointed by Banka Slovenije; or

2. a provisional assessment of the value of the assets and liabilities of the resolution entity (hereinafter: provisional valuation) produced by Banka Slovenije, having regard for Article 84 of this Act, if it is not possible to obtain an independent valuation due to objective reasons.

(2) An independent valuation shall be conducted by an auditor, auditing company or company appraiser that is independent from Banka Slovenije, other state authorities and the resolution entity (hereinafter: independent appraiser). A person shall be considered to not meet the condition of independence if the person has worked as an auditor at the resolution entity or Banka Slovenije in the last five years.

(3) There shall be no special judicial review proceedings against a valuation, nor is it possible to file an appeal against or objection to a valuation in the process of decision-making by Banka Slovenije. Eligible applicants may challenge the valuation solely within the judicial review proceedings against the decision on the initiation of resolution proceedings.

Article 81

(Objective and purpose of preliminary valuation)

(1) The objective of the preliminary valuation referred to in the previous article shall be to provide a fair, prudent and realistic valuation of the assets and liabilities of a resolution entity that meets the conditions for resolution referred to in the first paragraph of Article 68 or Article 73 of this Act and the conditions referred to in Article 97 of this Act in order to make a decision on the application of resolution actions.

(2) The purpose of a preliminary valuation is:

1. to ensure that all losses related to the assets of the resolution entity are recognised in full in financial statements; and

2. to determine the basis for a potential increase in the value of creditors’ claims or paid consideration in accordance with the fifth paragraph of Article 84 of this Act.

(3) A preliminary valuation shall be used as a basis:

1. for assessing whether the conditions for resolution and the application of resolution actions are met with regard to the resolution entity;

2. for determining the appropriate resolution tool to be used in order to achieve the resolution objectives;

3. for applying the tool of write-down and conversion of capital instruments and eligible liabilities, and for determining the extent of the write-down and conversion of capital instruments and eligible liabilities;

4. for applying the tool of write-down and conversion of bail-inable liabilities;

5. for determining the assets, rights, liabilities or shares or other instruments of ownership to be transferred, and for determining the amount of any consideration to be paid with regard to the transfer to the resolution entity or to the owners of the shares or other instruments of ownership of the resolution entity when the bridge bank tool or the asset separation tool is applied;

6. for determining the assets, rights, liabilities or shares or other instruments of ownership to be transferred, and for determining the market conditions referred to in Article 116 of this Act when the sale of business tool is applied;

7. for ensuring for all resolution actions that all losses related to the assets of the resolution entity are recognised in full at the time of the application of resolution tools or the application of the tool of write-down and conversion of capital instruments and eligible liabilities.

Article 82

(Principles of preliminary valuation)

A preliminary valuation shall be produced by complying with the following rules:

1. it shall be based on conservative assumptions, including the rates of default and the materiality of losses;

2. it shall not consider any potential future granting of extraordinary public financial support or emergency liquidity assistance as a last resort or under non-standard collateralisation, tenor and interest rate terms by Banka Slovenije to the resolution entity from the moment that a resolution action is adopted;

3. it shall take account of the fact that, if any resolution tool is applied, any reasonable expenses properly incurred by the resolution authority or under any resolution financing arrangements involved in the resolution, including any interest and fees paid for loans and guarantees provided by the resolution financing arrangements, may be recovered from the resolution entity in accordance with Article 15 of this Act.

Article 83

(Additional information concerning preliminary valuation)

(1) A preliminary valuation shall be supplemented by the following documentation from the statements of account and records of the resolution entity:

1. the updated financial statements drawn up in accordance with the International Financial Reporting Standards and a report on the financial position of the resolution entity;

2. an analysis and assessment of the accounting value of the assets of the resolution entity; and

3. a list of the outstanding on-balance-sheet and off-balance-sheet liabilities shown in the statements and other records kept by the resolution entity, with an indication of the liabilities to individual creditors and the classes of liabilities by priority for repayment under normal insolvency proceedings.

(2) For the purposes referred to in points 5 and 6 of the third paragraph of Article 81 of this Act, the analysis and assessment of the accounting value of the assets of the resolution entity referred to in point 2 of the previous paragraph shall also be supplemented by an analysis and an assessment of the value of the assets and liabilities of the resolution entity on a market value basis.

(3) A preliminary valuation shall also be supplemented by information on the ranking of the shareholders and creditors of the resolution entity in accordance with their priority for repayment under normal insolvency proceedings and an assessment of the treatment that each class of shareholders and creditors would have been expected to receive if the resolution entity were wound up under normal insolvency proceedings. This assessment shall not substitute for nor shall it affect the assessment required pursuant to Article 153 of this Act.

Article 84

(Provisional valuation)

(1) Banka Slovenije shall carry out a provisional valuation of the assets and liabilities of the resolution entity in accordance with the first paragraph of Article 81 of this Act if it is not possible to obtain an independent valuation with regard to resolution actions within the applicable time limit due to objective reasons.

(2) The second paragraph of Article 81 and Article 82 shall apply *mutatis mutandis* to the provisional valuation, if this is appropriate and feasible with regard to the circumstances and urgency of a particular case. A provisional valuation shall take into account an additional conservative haircut to the assets on account of potential losses (hereinafter: the additional loss buffer), which shall be determined and explained by Banka Slovenije with regard to the circumstances of the case.

(3) Article 80 of this Act notwithstanding, the provisional valuation shall serve as a basis for assessing whether the conditions for resolution and for the application of resolution actions, including the tool of write-down and conversion of capital instruments and eligible liabilities and other bail-inable liabilities provided that the conditions referred to in this article have been met, have been met.

(4) If for the purposes of the previous paragraph Banka Slovenije produces a provisional valuation, it shall immediately appoint an independent appraiser to produce an independent valuation. In such a case, an independent valuation may also be commissioned from an independent expert authorised to perform the valuation under Article 153 of this Act, however in such a case the two valuations must be substantively separate.

(5) If the assessment of the net value of the assets of the resolution entity according to the independent valuation is higher than the assessment of the provisional valuation, Banka Slovenije may decide that:

1. the higher value of the claims of holders of capital instruments or creditors be taken into account with regard to the write-down or conversion of capital instruments or eligible liabilities or the write-down and conversion of other bail-inable liabilities;

2. the bridge bank or asset management vehicle provide additional consideration:

* to the resolution entity with regard to the transfer of assets, rights and liabilities; or
* to the holders of the instruments of ownership with regard to the transfer of the instruments of ownership.

(6) If the assessment of the net value of the assets of the resolution entity according to the independent valuation is lower than the assessment of the provisional valuation, Banka Slovenije may decide that additional assets or claims in the amount of the difference be transferred to the bridge bank or asset management vehicle, if the resolution entity still has at its disposal assets suitable for transfer.

(7) If normal insolvency proceedings have been initiated against the resolution entity before the submission of an independent valuation, the expiry of the time limits for lodging claims under the law governing financial operations, insolvency proceedings and compulsory winding-up shall not affect the right of the bridge bank or asset management vehicle to enforce their claims in these proceedings.

Article 85

(Implementing regulations concerning valuation)

(1) If this is necessary for proper implementation of resolution actions, Banka Slovenije shall, taking into account the regulatory technical standards issued by the European Banking Authority, determine in detail the following via an implementing regulation:

1. the criteria for assessing the independence of experts in the valuation of assets and liabilities;

2. the methodology for the preliminary valuation of assets and liabilities;

3. the methodology for determining the additional loss buffer.

(2) Banka Slovenije shall consult the agency responsible for auditing about the content of the implementing regulation governing the criteria for assessing the independence of experts in the valuation of assets and liabilities.

2.3.3 Suspension of obligations

Article 86

(Conditions for power to suspend obligations)

(1) After consulting the competent authorities, Banka Slovenije shall decide on the suspension of any payment or delivery obligations pursuant to any contract to which a resolution entity is a party, where all of the following conditions are met:

1. the resolution entity is failing or is likely to fail considering the reasons referred to in Article 69 of this Act;

2. there is no immediately available private sector measure referred to in point 2 of the first paragraph of Article 68 of this Act that would prevent the failure of the resolution entity;

3. the suspension of obligations is deemed necessary to avoid the further deterioration of the financial conditions of the resolution entity; and

4. the suspension of obligations is deemed necessary:

* to assess the public interest in the determination of the condition referred to in point 3 of the first paragraph of Article 68 of this Act, or
* to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

(2) The previous paragraph notwithstanding, the suspension of obligations shall not be applied to payment or delivery obligations to the following:

1. systems or operators of payment or settlement systems subject to the final settlement of orders in the event of insolvency or other membership termination procedures, as defined by the law governing payment services and systems or the law governing the financial instruments market;

2. central counterparties that have obtained an authorisation pursuant to Article 14 of Regulation 648/2012/EU, and third-country central counterparties recognised in Member States pursuant to Article 25 of Regulation 648/2012/EU;

3. central banks.

(3) Banka Slovenije shall set the scope of the obligations regarding which suspension may be exercised, having regard for the circumstances of each case, and in so doing shall in particular assess:

1. the appropriateness of extending the suspension to eligible deposits, especially to guaranteed deposits held by natural persons and micro, small and medium-sized enterprises;

2. the impact that the decision to suspend obligations might have on the orderly functioning of financial markets;

3. the effects of applicable regulations governing insolvency and compulsory winding-up proceedings on the resolution entity, including supervisory and judicial powers, to safeguard creditors’ rights and to ensure the equal treatment of creditors in normal insolvency proceedings; and

4. the effects that the definition of the public interest in the sense of point 3 of the first paragraph of Article 68 of this Act would have on the implementation of insolvency or compulsory winding-up proceedings at the resolution entity.

(4) Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, Banka Slovenije shall ensure that the bank grants depositors access to an appropriate daily amount from those deposits.

(5) Within the framework of the powers pursuant to this Act or other laws, Banka Slovenije shall make the arrangements that it deems appropriate to ensure adequate coordination with the authorities responsible for actions in insolvency or compulsory winding-up proceedings in connection with the resolution entity.

Article 87

(Period of suspension of obligations)

(1) Banka Slovenije shall determine the period of suspension of obligations so as to be as short as possible and to not exceed the minimum period of time considered necessary having regard for points 3 and 4 of the first paragraph of the previous article. The suspension of obligations may in no case last beyond midnight at the end of the business day following the day of the publication of the notice of suspension. All effects of the decision to suspend obligations shall cease at the end of the period of suspension of obligations.

(2) After the end of the period of suspension referred to in the previous paragraph, the suspension shall cease to have effect.

(3) The suspension of payment or delivery obligations on the basis of a Banka Slovenije decision in accordance with the previous article shall apply to all contractual parties for the same period of time.

(4) A payment or delivery obligation that would have been due during the period of the suspension shall be due immediately upon expiry of that period.

Article 88

(Notice of suspension of obligations)

(1) Banka Slovenije shall inform the resolution entity and the authorities referred to in points 1 to 5 of the third paragraph of Article 250 of this Act of the decision to suspend obligations without delay, before the adoption of a decision on resolution, and shall publish the decision on its website at the same time.

(2) The resolution entity shall publish information on the issued decision referred to in the previous paragraph without delay:

1. on its own website; and

2. in accordance with the rules of the regulated market on which the bank’s securities or other debt instruments are traded, if the suspension is applied in connection with instruments listed for trading on a regulated market.

Article 89

(Additional powers in connection with power to suspend obligations)

(1) In the exercise of the power to suspend obligations in connection with a resolution entity, Banka Slovenije may also, for the duration of that suspension, restrict the rights of:

* secured creditors to enforce security interests in relation to any of the assets of the resolution entity for the duration of the suspension, the provisions of the third to fifth paragraphs of Article 150 of this Act applying *mutatis mutandis*; and
* counterparties to exercise termination in connection with the contract with the resolution entity for the duration of the suspension, the provisions of the second to eighth paragraphs of Article 151 of this Act applying *mutatis mutandis*.

(2) When Banka Slovenije has exercised the power to suspend payment or delivery obligations in relation to a resolution entity on the basis of the conditions referred to in Article 86 of this Act or the additional powers referred to in the previous paragraph before the initiation of resolution proceedings in relation to the resolution entity, at the initiation of resolution proceedings in relation to the resolution entity it may no longer exercise its powers under Articles 149 to 151 of this Act in relation to the resolution entity.

Article 90

(Exercise of powers to suspend obligations pursuant to other regulations)

The provisions of this Act governing the exercise of the power to suspend obligations referred to in this subchapter shall not affect the application of the provisions of other regulations or the exercise of powers pursuant thereto when they relate to the suspension of obligations for resolution entities:

1. before the resolution entity has been identified as failing or likely to fail for reasons referred to in Article 69 of this Act; or

2. that exceed the scope and duration of the suspension of obligations referred to in this subchapter, in connection with proceedings for insolvency or compulsory winding-up that apply in relation to the resolution entity.

2.3.4 Decision to apply resolution actions

Article 91

(Decision to apply resolution actions)

(1) Banka Slovenije shall assess, on the basis of the information available, whether the conditions for resolution in accordance with Articles 68 or 73 of this Act are met in relation to the resolution entity.

(2) If the conditions for the application of resolution actions are met, Banka Slovenije shall issue a decision on the initiation of resolution proceedings, which shall contain:

1. the finding that the reasons for resolution exist;

2. the list of resolution tools that Banka Slovenije intends to adopt with regard to the bank or other entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act; and

3. an indication of other powers that Banka Slovenije intends to exercise with regard to resolution actions, including any decision to appoint special management for the resolution entity.

(3) The determination of resolution tools in the decision referred to in the previous paragraph shall not prevent Banka Slovenije from deciding, after the initiation of resolution proceedings, that additional resolution tools are to be applied or that a resolution tool listed in the decision is not to be applied.

(4) Banka Slovenije shall issue a decision on the initiation of resolution proceedings or the application of resolution actions that, having regard for the TFEU, constitute state aid, when it receives a conditional, temporary or final decision of the European Commission on the compatibility of the application of such actions or aid with the internal market of the European Union.

Article 92

(Exercise of powers with regard to resolution actions)

(1) Banka Slovenije shall exercise powers and competences for resolution in accordance with this Act by applying individual resolution actions, including the application of resolution tools and the use of other powers, with a view to achieving the resolution objectives in accordance with Article 27 of this Act.

(2) Banka Slovenije shall exercise particular powers and competences with regard to resolution actions independently or in cooperation with other competent authorities in such a manner that ensures the effective application of resolution actions and tools so that the resolution objectives are achieved. In applying the resolution actions, Banka Slovenije shall take into account the objectives referred to in Article 27 of this Act and shall only use the resolution tools and powers that are the most appropriate for achieving these objectives with regard to the circumstances of each case.

(3) If the sale of business tool, the bridge bank tool or the asset separation tool is applied to the resolution entity, the rules on employees’ rights in the event of the bankruptcy of a company pursuant to the law governing financial operations, insolvency proceedings and compulsory winding-up shall apply to the enforcement of employees’ rights with regard to this transfer. Banka Slovenije shall notify the employee representatives at the resolution entity of the application of the resolution tools and, if appropriate, consult them regarding such.

Article 93

(Termination of resolution proceedings)

If Banka Slovenije establishes after a resolution action has been imposed that the reasons for resolution under this Act have ceased, it shall issue a decision on the termination of resolution proceedings.

2.4 Resolution tools

2.4.1 Application of resolution tools in general

Article 94

(Application of resolution tools)

(1) In resolution proceedings Banka Slovenije shall apply one or more resolution tools and exercise other resolution competences and powers to ensure the implementation of the tools applied in accordance with the resolution objectives referred to in Article 27 of this Act.

(2) In resolution proceedings Banka Slovenije may apply one or more resolution tools in any combination or a particular resolution tool several times.

(3) If in resolution proceedings Banka Slovenije applies the tool of write-down and conversion of bail-inable liabilities, before or together with the application of the aforementioned tool it shall also apply the write-down and conversion of capital instruments and eligible liabilities in accordance with this Act, in the reverse order of priority from that which applies to the repayment of claims against the resolution entity under normal insolvency proceedings.

(4) Banka Slovenije shall only apply the asset separation tool together with another resolution tool.

(5) If only the sale of business tool or the bridge bank tool that only includes the transfer of a part of the assets, rights or liabilities of the resolution entity is applied in resolution proceedings, the remaining part of the resolution entity shall be wound up in accordance with normal insolvency proceedings, duly taking into account the need to provide services or support for the continuation of the operations or services of the recipient in accordance with Article 148 of this Act and any other reasons for which the continued operation of the remaining part of the resolution entity is required in order to achieve the resolution objectives referred to in Article 27 of this Act.

Article 95

(Treatment of shareholders and creditors)

(1) The resolution tools that include the transfer of a part of the rights, assets and liabilities of the resolution entity shall be applied in such a way that the shareholders and creditors whose claims are not transferred receive for the settlement of their claims from the resolution entity at least the amount they would have received if the resolution entity had been wound up under normal insolvency proceedings at the time when the decision on the initiation of resolution was adopted.

(2) The previous paragraph notwithstanding, the write-down and conversion tool shall be applied in such a way that the shareholders and creditors whose claims are written down or converted into ownership interest have no greater losses than they would have had if the resolution entity had been wound up under normal insolvency proceedings at the time when the decision on the initiation of resolution was adopted.

Article 96

(Exclusion of application of other regulations)

(1) The provisions of other regulations or contractual arrangements determining the following shall not apply to the exercise of the powers and competences of Banka Slovenije:

1. the requirement to obtain the authorisation or consent of a public authority or other person, including the shareholders or creditors of the resolution entity;

2. the requirement regarding the provision of information, including any publication of notifications or prospectuses, or the requirement regarding the entry of facts into specific registers as a condition for particular acts to be performed by Banka Slovenije in accordance with the powers under this Act;

3. transferability restrictions or requirements to obtain prior consent with regard to the transfer of financial instruments, assets, rights or liabilities;

4. restrictions with regard to the performance of financial collateral arrangements or securities collateral arrangements, close-out arrangements or settlement agreements.

(2) Notwithstanding the provisions of other regulations, any notifications and entries into the relevant registers carried out or proposed pursuant to other regulations by Banka Slovenije with regard to the exercise of powers and competences in the application of resolution tools shall only have declaratory effects.

2.4.2 Write-down and conversion of capital instruments, eligible liabilities and other bail-inable liabilities

Article 97

(Write-down and conversion of capital instruments and eligible liabilities tool)

(1) Banka Slovenije shall apply the tool of write-down and conversion of capital instruments and eligible liabilities:

1. independently of other resolution actions; or

2. together with the application of any other resolution tool, provided that the conditions for resolution are met in accordance with this Act.

(2) The power to write down or convert eligible liabilities may be exercised before the conditions for resolution have been established in accordance with this Act, but only in relation to eligible liabilities that meet the conditions referred to in the fifth paragraph of Article 58 of this Act, except the condition in connection with the residual maturity of the liabilities set out in Article 72c(1) of Regulation 575/2013/EU. The principles referred to in Article 95 of this Act shall apply to the write-down or conversion of eligible liabilities in this instance.

(3) Banka Slovenije shall apply the tool of write-down and conversion of capital instruments and eligible liabilities without delay, if at least one of the following conditions is met in relation to the resolution entity:

1. the conditions for resolution in accordance with Article 68 have been met, but resolution tools have not yet been applied;

2. while exercising its powers, Banka Slovenije establishes that without the write-down or conversion of capital instruments and eligible liabilities referred to in the previous paragraph the resolution entity will no longer be viable;

3. the capital instruments are issued by a subsidiary and are recognised for the purposes of compliance with the capital requirements on an individual and a consolidated basis, and a joint decision is taken determining that the group will no longer be viable unless these capital instruments are written down or converted;

4. the capital instruments are issued by a parent undertaking and are recognised for the purposes of compliance with capital requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and Banka Slovenije, acting as the group-level resolution authority, establishes that the group will no longer be viable unless these capital instruments are written down or converted; or

5. the resolution entity needs extraordinary public financial support, except in the case referred to in the third indent of point 4 of the first paragraph of Article 69 of this Act.

(4) For the purposes referred to in point 2 of the previous paragraph, it shall be deemed that a resolution entity or group will no longer be viable if both of the following conditions are met:

1. the resolution entity or the group is failing or is likely to fail for reasons referred to in Article 69 of this Act; and

2. no circumstances exist to indicate that the reasons for the bank’s failure are likely to be eliminated without the application of the tool of write-down and conversion of capital instruments and eligible liabilities referred to in the second paragraph of this article, not even by taking into account alternative private sector measures, supervisory measures or early intervention measures.

(5) For the purposes referred to in point 1 of the previous paragraph, a group shall be deemed to be failing or likely to fail if it is in breach of consolidated prudential requirements or if there are objective elements to support a determination that the group, in the near future, will breach its consolidated prudential requirements in a way that would justify action by the competent authority, including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

(6) Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted on the basis of the application of the tool of write-down and conversion of capital instruments and eligible liabilities referred to in the second paragraph of this article at the level of such an entity shall count towards the absorption of loss and recapitalisation in meeting the minimum thresholds for:

1. the use of government measures to ensure the stability of financial system in accordance with the fourth paragraph of Article 79 of this Act; and

2. the use of funds from a resolution financing arrangement established in accordance with Regulation 806/2014/EU.

(7) Where relevant capital instruments and eligible liabilities referred to in the second paragraph of this article have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities shall be exercised together with the power to write down or convert the aforementioned instruments at the level of the parent undertaking of the entity concerned or at the level of other parent undertakings that are not resolution entities, so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

(8) With regard to the fulfilment of the conditions referred to in points 3 to 5 of the third paragraph of this article for a group operating in more than one Member State, Banka Slovenije shall take into account the potential effect of the application of the write-down and conversion of capital instruments tool in all Member States where the group operates.

(9) When the write-down and conversion of capital instruments tool is applied in the case referred to in point 3 of the third paragraph of this article in relation to a capital instrument issued by a subsidiary, this capital instrument shall not be written down to a greater extent or converted under worse terms than the equally ranked capital instruments at the level of the parent undertaking that have been included in the write-down or conversion of capital instruments at the level of the parent undertaking.

(10) Before applying the tool of write-down and conversion of capital instruments and eligible liabilities referred to in the second paragraph of this article, Banka Slovenije shall obtain a preliminary valuation of the assets and liabilities of the resolution entity in accordance with the first paragraph of Article 80 of this Act. The assessment of value is the basis for the write-down of capital instruments and eligible liabilities referred to in the second paragraph of this article and for the determination of the conversion rate for the conversion of capital instruments and eligible liabilities into shares or other instruments of ownership that is carried out with a view to recapitalising the resolution entity.

(11) When the tool of write-down and conversion of capital instruments and eligible liabilities is being applied independently of a resolution action, Banka Slovenije shall obtain an independent assessment of the treatment of creditors and shareholders in accordance with Article 153 of this Act.

(12) The write-down and conversion of capital instruments tool shall also be applied, having regard for the first paragraph of this article, to holders of Common Equity Tier 1 instruments issued or conferred pursuant to the conversion:

1. of debt instruments into shares or other instruments of ownership pursuant to contractual terms that with regard to the original debt instruments stipulate the conversion due to an event occurring before or at the time that Banka Slovenije assessed that the conditions for the application of the write-down and conversion of capital instruments tool were met; and

2. of relevant capital instruments into Common Equity Tier 1 instruments pursuant to the tool for the conversion of capital instruments.

(13) Where the principal amount of a relevant capital instrument or an eligible liability referred to in the second paragraph of this article is written down during the application of the tool of write-down and conversion of capital instruments and eligible liabilities, the reduction of that principal amount shall be permanent, and the creditor may only claim the increase in value in accordance with the reimbursement mechanism referred to in the fifth paragraph of Article 84 of this Act. Holders may solely pursue compensation set out by this Act in connection with the write-down and conversion of capital instruments and eligible liabilities, and in connection with the written-down liabilities they shall not be entitled to exercise any other claims in relation to the resolution entity, except for any liability already accrued and any liability for damages that may arise as a result of an appeal challenging the legality of the tool.

(14) Banka Slovenije may, with regard to the application of the tool of write-down and conversion of capital instruments and eligible liabilities referred to in the second paragraph of this article, decide that Common Equity Tier 1 instruments issued by the resolution entity or its parent undertaking in agreement with Banka Slovenije and the resolution authority responsible for the resolution of the parent undertaking be issued to holders of those capital instruments and eligible liabilities by the resolution entity.

(15) When Banka Slovenije exercises the power referred to in the previous paragraph, new Common Equity Tier 1 instruments shall be issued to eligible holders to comply with the conversion rate determined in accordance with Article 112 of this Act before the resolution entity issues any new shares or other Common Equity Tier 1 instruments to increase its own funds in connection with extraordinary public financial support measures. The new Common Equity Tier 1 instruments shall be issued to eligible parties immediately after conversion.

Article 98

(Responsibility for determining conditions for write-down and conversion of capital instruments and eligible liabilities)

(1) Banka Slovenije shall be responsible for determining the conditions referred to in the previous article in relation to a resolution entity established in the Republic of Slovenia, when the capital instruments are recognised for meeting the own funds requirements in accordance with Article 92 of Regulation 575/2013/EU on an individual basis.

(2) When the capital instruments or eligible liabilities referred to in the second paragraph of the previous article are recognised for meeting the requirement referred to in the first paragraph of Article 58 of this Act, Banka Slovenije shall be responsible for determining the conditions referred to in the third paragraph of the previous article, if the resolution entity is established in the Republic of Slovenia.

(3) When the capital instruments are issued by a resolution entity that is a subsidiary, and are recognised for the purposes of compliance with the own funds requirements on an individual and a consolidated basis, Banka Slovenije shall be responsible for determining the following in relation to the subsidiary:

1. the fulfilment of the conditions referred to in point 2 of the third paragraph of the previous article: if the subsidiary that issued the relevant instruments is established in the Republic of Slovenia;

2. the fulfilment of the conditions referred to in point 3 of the third paragraph of the previous article with regard to the joint decision: if Banka Slovenije is the consolidating supervisor in accordance with the law governing banking or if it is responsible for the resolution of a subsidiary established in the Republic of Slovenia.

Article 99

(Determination of conditions for write-down or conversion of capital instruments with regard to subsidiary bank)

(1) When a subsidiary has issued capital instruments or eligible liabilities referred to in the second paragraph of Article 97 of this Act that are taken into account for the purposes of compliance with the requirement referred to in Article 58 of this Act on an individual basis, or capital instruments that are taken into account for the purposes of compliance with own funds requirements on an individual or consolidated basis, before determining the existence of the conditions for the application of the tool of write-down and conversion of capital instruments and eligible liabilities referred to in the third paragraph of Article 97 of this Act, Banka Slovenije shall notify:

1. when considering the existence of the conditions referred to in points 2 to 4 of the third paragraph of Article 97 of this Act, after consulting the resolution authority responsible for the relevant resolution entity:

* the consolidating supervisor or other authority in the Member State of the consolidating supervisor responsible for determining the conditions referred to in the third paragraph of Article 97 of this Act in relation to the parent undertaking,
* the resolution authorities of other entities in the same resolution group that directly or indirectly purchased liabilities referred to in Article 58 of this Act from the institution that is a subsidiary of the resolution entity or a third-country entity but is not itself a resolution entity;

2. when considering the existence of the conditions referred to in point 3 of the third paragraph of Article 97 of this Act: without delay, as soon as the determination is made, the competent authority of the Member State that in accordance with the regulations of that country is responsible for determining the viability of the subsidiary in connection with the determination of the conditions referred to in the third paragraph of Article 97 of this Act at a subsidiary established in the aforementioned Member State.

(2) Banka Slovenije shall attach to the notification referred to in the previous paragraph an explanation of the reasons for initiating the procedure for determining the fulfilment of the conditions referred to in the third paragraph of Article 97 of this Act by the subsidiary.

(3) After consulting the competent authorities notified in accordance with the first paragraph of this article, Banka Slovenije, acting as the resolution authority of the subsidiary bank, shall assess:

1. whether there is an appropriate and feasible alternative measure to replace the tool of write-down and conversion of capital instruments and eligible liabilities; and

2. whether there is a realistic prospect that the implementation of an alternative measure would, within an adequate timeframe, eliminate the reasons for the application of the tool of write-down and conversion of capital instruments and eligible liabilities.

(4) When Banka Slovenije, acting as the group-level resolution authority, receives a notification referred to in the first paragraph of this article sent by the resolution authority of a subsidiary to all resolution authorities responsible for group entities, it shall provide an opinion on the circumstances referred to in the previous paragraph. The alternative measures referred to in the previous paragraph shall include supervisory measures and early intervention measures as defined in the law governing banking and the transfer of assets or capital of the parent undertaking.

(5) When Banka Slovenije, acting as the resolution authority of the subsidiary bank, assesses, after consulting the competent authorities that it has notified in accordance with the first paragraph of this article, that there are one or more alternative measures fulfilling the conditions referred to in the third paragraph of this article, it shall ensure, within the extent of its powers, that these measures are implemented.

(6) When Banka Slovenije, acting as the resolution authority of the subsidiary bank, assesses, with regard to the determination of the fulfilment of the conditions referred to in points 2 to 4 of the third paragraph of Article 97 of this Act and after consulting the authorities that it has notified in accordance with the first paragraph of this article, that no alternative measures referred to in the third paragraph of this article exist, it shall decide whether the determination of the fulfilment of the conditions referred to in the third paragraph of Article 97 by the subsidiary is appropriate. If Banka Slovenije decides to initiate the procedure for determining the fulfilment of the conditions referred to in the third paragraph of Article 97 of this Act by the subsidiary, it shall immediately notify the authorities of the Member States accordingly and shall strive for the adoption of a joint decision in accordance with Article 77 of this Act.

(7) Banka Slovenije, acting as the resolution authority of a subsidiary in relation to which a joint decision has been adopted in accordance with Article 77 of this Act with regard to the fulfilment of the conditions referred to in the third paragraph of Article 97 of this Act, shall immediately apply the tool of write-down and conversion of capital instruments and eligible liabilities of this subsidiary.

Article 100

(Bail-in tool)

(1) Within the application of the write-down and conversion of bail-inable liabilities tool in resolution proceedings, Banka Slovenije may determine for a particular class of the resolution entity’s liabilities that:

1. the principal amount or the remaining outstanding amount of bail-inable liabilities of the resolution entity be reduced, including the reduction of these liabilities to zero;

2. the principal amount of the bail-inable liabilities of the resolution entity be converted into ordinary shares or other instruments of ownership issued by the resolution entity, its parent undertaking or the bridge bank to which the assets, rights or liabilities of the resolution entity are transferred.

(2) Banka Slovenije shall apply the bail-in tool referred to in the previous paragraph for any of the following purposes:

1. to recapitalise the resolution entity to such an extent that the bank again meets the conditions for obtaining an authorisation to provide banking services, when the resolution entity is required, in accordance with regulations, to meet a minimum capital requirement, or to facilitate the continuation of its activities and to sustain sufficient market confidence in the resolution entity;

2. to provide capital for the bridge bank or the asset management vehicle;

3. to transfer the reduced claims from the partial write-down of liabilities to the bridge bank, to the recipient under the sale of business tool or to the asset management vehicle under the asset separation tool.

(3) Banka Slovenije shall only apply the bail-in tool for the purposes referred to in point 1 of the previous paragraph if there is a reasonable prospect that the application of this tool, together with other resolution tools and powers, and with measures pursuant to the business reorganisation plan referred to in Article 106 of this Act, will restore the financial soundness of the resolution entity and ensure its long-term viability.

(4) If the conditions referred to in the previous paragraph are not met, Banka Slovenije may apply the bail-in tool for the purposes referred to in point 2 of the second paragraph of this article together with other resolution tools.

Article 101

(Restrictions on application of bail-in tool)

(1) The bail-in tool may be applied in relation to any liabilities of the resolution entity that are not excluded from the application of this tool pursuant to the second paragraph of this article or Article 102 of this Act.

(2) The bail-in tool shall not be applied to the following liabilities to which the law of the Republic of Slovenia, another Member State or a third country applies:

1. guaranteed deposits;

2. secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes that form an integral part of the cover pool and that, in accordance with applicable regulations, are secured in a manner similar to covered bonds;

3. any liability that arises by virtue of the resolution entity holding cash or other repayable funds of clients including the cash or other repayable funds of clients held on behalf of undertakings for collective investment in transferrable securities or of alternative investment funds, provided that such clients are protected under the applicable insolvency law;

4. any liability that arises by virtue of a fiduciary relationship between the resolution entity (as fiduciary) and another person (as beneficiary), provided that the beneficiary can under normal insolvency proceedings enforce for their claim the right of exclusion or the right to separate settlement as defined by the law governing financial operations, insolvency proceedings and compulsory winding-up;

5. liabilities to institutions that are not part of the same group, if the original maturity is less than seven days;

6. liabilities to systems or operators of payment or settlement systems subject to the final settlement of orders in the event of insolvency or other membership termination procedures, as defined by the law governing payment services and systems or the law governing the financial instruments market, or to participants in these systems, when the liabilities are due to the participation of the resolution entity in such a system and have a residual maturity of less than seven days, or to central counterparties that have obtained an authorisation pursuant to Article 14 of Regulation 648/2012/EU and third-country central counterparties recognised pursuant to Article 25 of Regulation 648/2012/EU;

7. liabilities to:

* employees, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by law or by a collective bargaining agreement and is subject to the requirements of the law governing banking concerning policies and practices related to remuneration,
* creditors arising from the provision of goods or commercial services to the resolution entity that are critical to the daily functioning of its operations, including IT services, utilities, and the rental, servicing and upkeep of premises,
* tax and social security authorities, when these liabilities are considered priority claims under normal insolvency proceedings,
* deposit guarantee schemes;

8. liabilities to entities that are part of the same resolution group without themselves being resolution entities, regardless of their maturities.

(3) Banka Slovenije shall ensure that all the assets included in the cover pool for covered bonds remain unaffected, segregated and with enough funding.

(4) The exclusion of the liabilities referred to in points 1 and 2 of the second paragraph of this article from the application of the bail-in tool shall not prevent the application of this tool to the amount of eligible deposits exceeding the guaranteed deposit amount or to any amount of secured liability exceeding the value of assets, guarantees, lien or collateral against which it is secured, including the assets in the covered bond cover pool exceeding the value of covered bonds.

(5) The exclusion of liabilities referred to in point 8 of the second paragraph of this article shall not apply when those liabilities rank below ordinary unsecured liabilities under the regulations governing normal insolvency proceedings. In this instance the resolution authority of the relevant subsidiary that is not a resolution entity shall assess whether the amount of items complying with the conditions referred to in the fifth and sixth paragraphs of Article 58 of this Act is sufficient to support the implementation of the preferred resolution strategy.

(6) In the application of the bail-in tool Banka Slovenije shall assess whether liabilities to other entities that are part of the same resolution group without themselves being resolution entities and that are not excluded pursuant to previous article should be excluded or partially excluded pursuant to Article 102 of this Act to ensure the effective implementation of the resolution strategy.

Article 102

(Exclusion of individual liabilities from application of bail-in tool)

(1) In connection with the application of the bail-in tool, Banka Slovenije may exceptionally exclude, in whole or in part, certain liabilities that are not excluded pursuant to the second paragraph of the previous article, if:

1. despite its efforts, the bail-in tool cannot be applied to this particular liability within a reasonable time;

2. the exclusion is proportionate and strictly necessary to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the resolution entity to continue key operations, services and transactions;

3. the exclusion is proportionate and strictly necessary to avoid the occurrence of widespread contagion, in particular as regards eligible deposits held by natural persons and by micro, small and medium-sized enterprises, as otherwise the functioning of the financial markets, including financial market infrastructures, would be severely disrupted in a manner that could cause a serious disturbance to the economy of a Member State or of the European Union; or

4. the application of this tool to these liabilities would cause a reduction in the value of the resolution entity to the extent that the losses borne by other creditors would be higher than if those liabilities were excluded from the application of the bail-in tool.

(2) When, in accordance with the previous paragraph, Banka Slovenije excludes in whole or in part a particular bail-inable liability or a particular priority class of bail-inable liabilities, the extent of the write-down and conversion of other bail-inable liabilities shall be increased accordingly, provided that no creditor suffers greater losses than they would have if the resolution entity was wound up under normal insolvency proceedings.

(3) When, in accordance with this article, Banka Slovenije excludes in whole or in part a particular bail-inable liability or a particular priority class of bail-inable liabilities, and the losses that would have been borne by those liabilities have not been passed on fully to the creditors of other bail-inable liabilities, the resolution entity may receive a contribution from the resolution financing arrangements established pursuant to Regulation 806/2014/EU to ensure one or both of the following:

1. the coverage of any losses that have not been absorbed by the excluded liabilities so that the net asset value of the resolution entity is zero;

2. the instruments of ownership or other capital instruments issued by the entity in resolution proceedings are paid in, in order to recapitalise the resolution entity or the bridge bank to such an extent that the required Common Equity Tier 1 ratio is ensured.

(4) For the purposes of the previous paragraph, Banka Slovenije may exceptionally provide additional funds from alternative financing sources, if all the conditions referred to in Articles 27(9) and 27(10) of Regulation 806/2014/EU are met.

(5) With regard to the exclusion pursuant to the first paragraph of this article, Banka Slovenije shall take into account the following:

1. losses should be borne first by shareholders and only then by creditors in reverse order of preference from that which applies to the repayment of these liabilities under normal insolvency proceedings;

2. the level of loss-absorbing capacity that the resolution entity would maintain if the individual bail-inable liabilities or class of bail-inable liabilities concerned were excluded; and

3. the need to maintain adequate resources for financing the resolution.

(6) Banka Slovenije shall inform the European Commission before carrying out the exclusion of individual liabilities pursuant to the first paragraph of this article. Where the exclusion would require a contribution from the resolution financing arrangement or an alternative financing source under the third and fourth paragraphs of this article, the European Commission may, within 24 hours of receiving such a notification or a longer period with the agreement of Banka Slovenije, prohibit or require amendments to the proposed exclusion in accordance with regulations in order to protect the integrity of the internal market.

Article 103

(Contractual recognition of bail-in)

(1) In contracts that provide the basis for creating capital instruments, eligible liabilities or other bail-inable liabilities in accordance with this Act, and to which the law of a third country applies, resolution entities shall include a contractual term based on which:

1. the creditor recognises that the liability may be subject to write-down and conversion on the basis of Banka Slovenije actions in accordance with this Act; and

2. the creditor agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the application of the write-down and conversion tool in accordance with this Act.

(2) The previous paragraph shall not apply to contractual arrangements that provide the basis for liabilities from eligible deposits held by a natural person or an undertaking with the status of a micro, small or medium-sized enterprise or from the deposits of such persons held with a branch of the bank established in a third country that would be considered eligible deposits if held with the bank.

(3) Banka Slovenije may decide that the requirement referred to in the first paragraph of this article shall not apply to a resolution entity in respect of which the minimum requirement for own funds and eligible liabilities pursuant to this Act equals the loss-absorption amount for the losses that the entity would be expected to incur should the liabilities referred to in the first paragraph of this article that do not include the contractual term referred to in that subparagraph not count towards the aforementioned requirement.

(4) Banka Slovenije may decide that the first paragraph of this article does not apply if, in accordance with the law of the third country or binding agreements with the third country, the measures imposed by Banka Slovenije with regard to the write-down and conversion of liabilities subject to the law of a third country are effective in the third country. Before making such a decision, Banka Slovenije may require the resolution entity to submit a legal opinion on the legal enforceability of Banka Slovenije’s decision concerning the write-down and conversion of liabilities in the third country.

(5) A contractual arrangement that does not include the requirement referred to in the first paragraph of this article shall not preclude the application of the tool of write-down and conversion of those liabilities pursuant to this Act.

Article 104

(Exemption from contractual recognition of bail-in)

(1) When a resolution entity assesses that it is legally or otherwise impracticable to include the contractual term referred to in the first paragraph of the previous article in the contractual arrangements, it shall notify Banka Slovenije of its assessment, including a designation of the class of the liability in the event of insolvency proceedings, and the grounds on which the inclusion is assessed as impracticable. The resolution entity shall also provide Banka Slovenije with all information needed for an assessment of the effects of such an exemption on the resolvability of the resolution entity.

(2) If after receiving the notification referred to in the previous paragraph Banka Slovenije concludes that it is not legally or otherwise impracticable to include the contractual term required in accordance with the previous article, despite the grounds cited by the resolution entity, it shall require the resolution entity, within a reasonable timeframe, to include an appropriate contractual term in the contractual arrangements, having regard for the need to ensure the resolvability of the resolution entity concerned. Banka Slovenije may additionally require the resolution entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

(3) The obligation referred to in the first paragraph of the previous article shall be suspended from the receipt of notification until the decision by Banka Slovenije in accordance with this article.

(4) The first paragraph of this article notwithstanding, a resolution entity may not exercise an exemption from contractual recognition of bail-in in connection with:

1. Additional Tier 1 instruments;

2. Tier 2 instruments;

3. unsecured liabilities from debt instruments in the form of bonds or other forms of transferable debt, or in the form of instruments creating or acknowledging a debt.

(5) Where Banka Slovenije, in the context of the assessment of the resolvability of the resolution entity in accordance with this Act or at any other time, determines that, within a class of liabilities referred to in Article 230 of this Act that includes eligible liabilities, the amount of liabilities to which exemption from the requirement with regard to contractual recognition of bail-in applies under the conditions referred to in this article, together with the liabilities that are excluded from the application of the bail-in tool in accordance with Article 101 of this Act or that are likely to be excluded in accordance with Article 102 of this Act, amounts to more than 10% of the aforementioned class, it shall assess the impact of that particular fact on the resolvability of the resolution entity, including the impact on resolvability resulting from the risk of breaching Article 95 of this Act.

(6) Where Banka Slovenije concludes, on the basis of the assessment referred to in the previous paragraph, that the liabilities to which exemption from the requirement with regard to contractual recognition of bail-in applies under the conditions referred to in this article create a substantive impediment to resolvability, it shall apply powers as appropriate to remove that impediment to the resolvability of the bank in accordance with this Act.

(7) Liabilities that do not meet the requirement with regard to contractual recognition of bail-in shall not be counted towards the minimum requirement for own funds and eligible liabilities pursuant to this Act.

(8) Banka Slovenije may designate classes of liabilities to which a resolution entity can apply the exemption from the requirement with regard to contractual recognition of bail-in pursuant to this article.

Article 105

(Special rules concerning write-down and conversion of derivatives)

(1) Banka Slovenije shall only exercise the power to write down and convert liabilities arising from derivatives in the event of the concurrent or previous termination of a derivatives contract and any set-off of liabilities and claims arising from the early termination of this contract when the derivatives contract or master agreement concluded in relation to the derivative instruments concerned contains a netting arrangement.

(2) For the purposes of the previous paragraph, Banka Slovenije may decide in the resolution proceedings on the early termination of any contract on financial instruments or derivatives, and enforce a netting arrangement due to early termination of a contract, except when certain financial instruments are excluded from the write-down and conversion of liabilities in accordance with Article 102 of this Act.

(3) If a netting arrangement applies to derivatives transactions, Banka Slovenije or an independent appraiser in the valuation under Article 80 of this Act shall determine the net liability or claim by taking into account the effects of the netting under the conditions determined in the netting arrangement.

(4) Banka Slovenije shall determine the value of liabilities arising from derivatives in accordance with the following:

1. appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

2. principles for establishing the relevant point in time at which the value of a derivative position should be established;

3. appropriate methodologies for comparing the reduction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

Article 106

(Business reorganisation plan)

(1) When Banka Slovenije applies the bail-in tool in order to recapitalise a resolution entity in accordance with point 1 of the second paragraph of Article 100 of this Act, it shall request that the resolution entity draw up and submit to Banka Slovenije within one month of the application of the tool a business reorganisation plan that includes at least the following elements:

1. a detailed analysis of the factors and problems that caused the resolution entity to fail or to be likely to fail, and the circumstances that led to this situation;

2. a description of the measures for the reorganisation of the resolution entity’s business aiming to restore the long-term viability of the resolution entity or a part of its business within a reasonable time; and

3. a timetable for the implementation of these measures.

(2) The business reorganisation measures shall be based on realistic assumptions regarding the economic situation and the situation in the financial markets in which the resolution entity will operate. For this purpose, the business reorganisation plan shall take into account the current situation in the financial markets and forecasts for the future situation and include the assumptions for best-case and worst-case scenarios, including a combination of events enabling the identification of the main vulnerabilities of the resolution entity. The assumptions shall be compared with appropriate sector-wide benchmarks.

(3) Having regard for the previous paragraph, the measures for the reorganisation of the business of the resolution entity may include:

1. the reorganisation of its activities;

2. changes to the operational systems and infrastructure;

3. withdrawal from loss-making activities;

4. the restructuring of existing activities so that they become competitive;

5. the sale of assets or business lines.

(4) Banka Slovenije may appoint special management in accordance with Article 139 of this Act with the aim of ensuring that the resolution entity draw up and implement the business reorganisation plan.

(5) If, according to the EU state aid rules, the European Commission has to be notified of the business reorganisation plan, the business reorganisation plan shall correspond to the plan submitted in the state aid assessment procedure.

(6) If the bail-in tool is applied for the purposes of recapitalisation to two or more entities in a group and the EU parent undertaking is established in the Republic of Slovenia, the business reorganisation plan shall be drawn up by the EU parent undertaking so that it includes all group entities, while complying with the rules provided by the law governing banking concerning the drawing-up of a group recovery plan. The EU parent undertaking shall submit the group business reorganisation plan to Banka Slovenije when the latter is the group-level resolution authority. Banka Slovenije shall forward the plan to the other resolution authorities concerned and to the European Banking Authority.

(7) Exceptionally, when this is necessary to achieve the resolution objectives, the period referred to in the first paragraph of this article may be extended, but for no more than one month. If, according to the EU state aid rules, the European Commission has to be notified of the business reorganisation plan, Banka Slovenije may extend the period referred to in the first paragraph of this article until the decision of the European Commission concerning the assessment of the compliance of state aid with the EU state aid rules, but for no more than one month.

Article 107

(Assessment of business reorganisation plan)

(1) Within one month of receiving the business reorganisation plan, Banka Slovenije shall, in agreement with the competent authority, assess the likelihood that the business reorganisation measures provided in the plan, if implemented, would restore the long-term viability of the resolution entity.

(2) Banka Slovenije shall approve the business reorganisation plan if it finds, based on the assessment referred to in the previous paragraph, that the resolution entity is likely to achieve the set objective.

(3) If Banka Slovenije does not approve the business reorganisation plan, it shall inform the resolution entity of the reasons for refusing approval and require the plan to be amended or supplemented to eliminate these reasons.

(4) The resolution entity shall submit a new business reorganisation plan within two weeks of being informed of the reasons referred to in the previous paragraph. Banka Slovenije shall assess the amended plan and within one week inform the resolution entity of the approval of the plan or of the request for additional amendments to the plan.

(5) The management body of the resolution entity or the special managers, if appointed, shall implement the measures determined in the business reorganisation plan and at least every six months submit to Banka Slovenije a report on the progress made as regards the implementation of the plan. When necessary to achieve the objectives referred to in the first paragraph of this article, the management body or special managers, when appointed, may propose amendments to the plan, which shall be approved by Banka Slovenije according to the procedure referred to in paragraphs two to four of this article.

Article 108

(Amount of bail-in)

(1) For the purpose of the application of the bail-in tool and having regard for the preliminary valuation referred to in the first paragraph of Article 80 of this Act, Banka Slovenije shall assess the amount of capital necessary for resolution as a sum of the following:

1. the amount of capital needed to cover the losses established so that the net value of the assets and liabilities of the resolution entity is equal to zero; and

2. the amount of capital needed to restore the Common Equity Tier 1 ratio of the bank under resolution or the bridge bank, so that:

* sufficient market confidence in the bank under resolution or the bridge bank is ensured; and
* the bank under resolution or the bridge bank will meet the conditions for the authorisation to provide banking services for at least one year following the implementation of the measures for increasing the capital.

(2) On the basis of the assessment referred to in the previous paragraph and having regard for Article 109 of this Act, Banka Slovenije shall determine the amount in which the instruments of ownership and other capital instruments, eligible liabilities and bail-inable liabilities should be written down or the amount in which the relevant instruments and liabilities should be converted to cover the losses established and to provide the capital for achieving the required capital adequacy. In so doing Banka Slovenije shall take into account any contributions to resolution from the Single Resolution Fund in accordance with Regulation 806/2014/EU.

(3) If during resolution Banka Slovenije applies the asset separation tool in connection with the bail-in tool, a conservative assessment of the capital needs of the asset management vehicle shall also be taken into account in determining the amount by which the bail-inable liabilities should be reduced.

(4) Banka Slovenije shall establish and maintain the arrangements for reporting and processing the data, so that the assessment and valuation referred to in the first paragraph of this article is based on current and comprehensive information on the assets and liabilities of the bank in resolution proceedings.

Article 109

(Sequence of write-down and conversion)

(1) In applying the tool of write-down and conversion of capital instruments and eligible liabilities and the bail-in tool, Banka Slovenije shall comply with the ranking of the relevant instruments and liabilities of the resolution entity, taking into account the reverse order of repayment from that which applies in normal insolvency proceedings, so that:

1. first, the nominal or attributable amount of shares and other instruments of ownership is reduced proportionally to the amount of the established loss, which is the difference between the asset net value and liabilities net value, including a reduction to zero, when necessary;

2. if the reduction referred to in the previous point does not provide the amount of capital necessary for resolution, the principal amount of Additional Tier 1 instruments and of the resolution entity’s other liabilities of the same priority class, including any interest, are written down or converted into Common Equity Tier 1 instruments up to the amount of capital needed, if these liabilities have not been reduced under the preceding point;

3. if the reduction referred to in points 1 and 2 of this paragraph does not provide the amount of capital necessary for resolution, the principal amount of Tier 2 instruments and of the resolution entity’s other liabilities of the same priority class, including any interest, are written down or converted into Common Equity Tier 1 instruments up to the amount of capital needed, if these liabilities have not been reduced under points 1 and 2 of this paragraph;

4. if the reduction referred to in points 1 to 3 of this paragraph does not provide the amount of capital necessary for resolution, the principal amount of the remaining subordinated debt and of the resolution entity’s other liabilities of the same priority class, including any interest, are written down or converted into Common Equity Tier 1 instruments up to the amount of capital needed, if these liabilities have not been reduced under points 1 to 3 of this paragraph;

5. if the reduction referred to in points 1 to 4 of this paragraph does not provide the amount of capital necessary for resolution, the principal amount or the outstanding amount of the resolution entity’s other bail-inable liabilities are written down or converted into Common Equity Tier 1 instruments up to the amount of capital needed, by following the reverse order of repayment in accordance with the second paragraph of Article 230 of this Act.

(2) Bail-inable liabilities of a particular priority class may be written down or converted into instruments of ownership if the instruments of ownership, other capital instruments and eligible liabilities, and other subordinated liabilities of a preceding priority class have been written down or converted before that or are written down or converted at the same time, except when, pursuant to this Act, certain liabilities are excluded from the application of the bail-in tool.

(3) In writing down and converting bail-inable liabilities of the same priority class, Banka Slovenije shall reduce the principal amount or the amount of capital instruments and liabilities to the same extent *pro rata* to their value. The first sentence of this paragraph shall not preclude liabilities that were excluded from the application of the bail-in tool in accordance with Article 102 of this Act from being treated more favourably than other liabilities of the same priority class.

(4) Before writing down and converting the liabilities referred to in point 5 of the first paragraph of this article, Banka Slovenije shall convert or reduce the remaining principal amount of capital instruments or the amount of liabilities referred to in points 2 to 4 of the first paragraph of this article, to the extent that it has not yet been converted under the first paragraph of this article, if the following contractual conditions apply to these instruments or liabilities:

1. the principal amount is reduced upon the occurrence of any event related to the financial situation, solvency or levels of capital of the resolution entity; or

2. the conversion of the principal amount to shares or other instruments of ownership is undertaken upon the occurrence of any event related to the financial situation, solvency or levels of capital of the resolution entity.

(5) If the principal or amount of the capital instrument or bail-inable liability is reduced under point 1 of the previous paragraph but not to zero, the remaining principal amount of the instruments or liabilities referred to in the previous paragraph shall be written down or converted before the write-down and conversion of liabilities pursuant to the first paragraph of this article.

(6) Banka Slovenije may apply the bail-in tool to any resolution entity, duly taking into account the legal form of the resolution entity or deciding on a change in its legal form.

Article 110

(Decision on write-down and conversion)

(1) In the decision on the write-down of capital instruments and eligible liabilities or bail-inable liabilities, Banka Slovenije shall, having regard for the previous article, determine the following:

1. the capital instruments and liabilities to be written down,

2. for individual classes of capital instruments or liabilities, also whether the principal amount of the relevant instruments or the outstanding amount of liabilities is to be reduced to zero or only to a certain extent; and

3. in the case of the write-down of instruments of ownership, also:

* the amount of the share capital after the write-down and the nominal or attributable amount of an instrument representing the holder’s proportional share in the share capital; and
* the amount of the increase in the share capital if due to the write-down of the instruments of ownership the bank’s share capital is reduced to less than the minimum share or the initial capital amount.

(2) In the decision on the conversion of capital instruments and eligible liabilities or bail-inable liabilities, Banka Slovenije shall, having regard for the previous article, determine the following:

1. the capital instruments and liabilities to be converted into new Common Equity Tier 1 instruments and, for the capital instruments and liabilities of a particular priority class, whether the principal amount of capital instruments or the outstanding amount of liabilities is to be converted in full or only to a certain extent;

2. the amount of the increase in the share capital when new instruments of ownership are issued for the purposes of conversion, and the nominal or attributable amount of an instrument representing the holder’s proportional share in the share capital; and

3. the conversion rate used in the conversion of the capital instruments or liabilities of a particular priority class into Common Equity Tier 1 instruments, with the conversion rate being expressed as the amount of the principal amount of the capital instrument or of the outstanding amount of the liability (unit) for one Common Equity Tier 1 instrument.

Article 111

(Consequences of write-down and conversion for holders of capital instruments and creditors)

(1) On the basis of the application of the tool of write-down and conversion of capital instruments, eligible liabilities or other bail-inable liabilities, the following consequences shall be borne by the holders of capital instruments and the creditors of such liabilities:

1. the liability of the resolution entity shall be terminated in the amount of the written-down or converted principal amount of the capital instrument or in the amount of the written-down or converted outstanding amount of the liability, and shall be considered discharged for all purposes, except in the case of the exercise of powers in accordance with the fifth paragraph of Article 84 of this Act; and

2. all other actual or contingent liabilities of the resolution entity related to the written-down or converted amount of the principal amount of the capital instrument or liability that were not considered at the time of the application of the write-down and conversion tool shall be terminated in the amount of the written-down or converted principal amount of the capital instrument or liability.

(2) The holder of a capital instrument or the creditor of a liability that was written down or converted in accordance with this Act shall not be eligible to make any claims against the issuer or debtor on the basis of the written-down or converted capital instrument or liability, except for claims with regard to the following:

1. Common Equity Tier 1 instruments conferred on a holder or creditor in the event of conversion, taking into account the conversion rate;

2. liabilities falling due before the date of the write-down;

3. liability for compensation if a court finds in judicial review proceedings that the decision on the write-down was unlawful.

(3) New instruments of ownership issued upon the application of the conversion of capital instruments or liabilities tool into Common Equity Tier 1 instruments may be provided to holders or creditors for the liabilities referred to in points 2 and 3 of the previous paragraph. The holders of capital instruments or creditors of liabilities shall not be eligible to claim from the resolution entity compensation for damage or to enforce other claims that have been contractually arranged or provided by another law in the event of breaches or non-performance of the contractual obligations of the issuer if the breach or non-performance of the contractual obligations of the bank is due to the application of the write-down and conversion tool pursuant to this Act. Any contractual arrangement contrary to this provision shall be null and void.

(4) After the application of the write-down and conversion tool, any capital instrument or liability that is not terminated in full by the application of the write-down and conversion tool shall continue to apply in relation to the remaining principal amount of the capital instrument or remaining amount of the liability, taking into account any changes to the conditions made by Banka Slovenije in exercising the power referred to in Article 147 of this Act.

(5) The write-down or conversion of a capital instrument or liability shall not affect the liabilities of third parties as co-debtors or liabilities arising from a security or guarantee provided by a third party with regard to the written-down instrument or liability, except when the parties explicitly agree that in such cases third-party liability is reduced accordingly. Third parties that after the write-down or conversion of a capital instrument or bail-inable liability discharge their liabilities to holders or creditors in relation to the written-down instrument or liability shall not be eligible to make, in relation to the resolution entity, any subsequent claims with regard to their discharge in the part in which the liability of the resolution entity was terminated in relation to the holder or creditor owing to the write-down of the capital instrument or liability. The subsequent claim of third parties due to their discharge of a liability referred to in the first sentence of this paragraph is, in relation to the resolution entity, restricted solely to the instruments conferred on the creditor within the application of the conversion tool to these capital instruments or liabilities.

Article 112

(Determination of conversion rate)

(1) With regard to the conversion of capital instruments and eligible liabilities or other liabilities to which the conversion tool may be applied, Banka Slovenije shall determine different conversion rates for the capital instruments and liabilities of the different priority classes referred to in the first paragraph of Article 109 of this Act. In so doing Banka Slovenije shall take into account the following:

1. the conversion rate shall provide appropriate compensation to the affected holder of the capital instrument or liability for any loss incurred owing to the termination of the capital instrument or other liability to which the conversion tool is applied; and

2. the conversion rate applicable to the capital instrument or liability of a subordinated class shall be more favourable for their holders than the conversion rate applicable to the capital instruments and liabilities of a senior class.

(2) Any new instruments of ownership issued pursuant to the decision on the conversion of capital instruments and liabilities shall meet the conditions for Common Equity Tier 1 instruments. The new instruments of ownership shall be conferred on eligible holders pursuant to a decision on the conferral of new instruments of ownership adopted by Banka Slovenije, normally at the same time as the decision on conversion.

(3) Any restrictions provided in the constitutional documents of the resolution entity shall not apply to the instruments of ownership conferred on beneficiaries on the basis of the conversion of capital instruments and eligible liabilities tool or the tool of conversion of liabilities to which the conversion tool may be applied.

(4) Notwithstanding the provisions of the law governing companies or any other regulation and notwithstanding any restrictions or requirements provided in the constitutional document or any contractual arrangement determining the preferential right to new shares or other instruments of ownership of the resolution entity, the holders of this right may not exercise it with regard to the new instruments of ownership issued and conferred on beneficiaries on the basis of the conversion of capital instruments or eligible liabilities tool.

Article 113

(Treatment of qualifying holdings in conversion)

(1) If, on the basis of the conversion of capital instruments or eligible liabilities and on the basis of the conferral of new instruments of ownership, an eligible acquirer acquires or increases a qualifying holding in the bank, for which an authorisation to acquire a qualifying holding is required under the law governing banking, this authorisation shall normally be obtained before the application of the conversion tool.

(2) Banka Slovenije may require that the European Central Bank decide, depending on the circumstances of the case, on the authorisation to acquire a qualifying holding within a time limit that is shorter than the time limit provided in the law governing banking for deciding on an authorisation to acquire a qualifying holding.

(3) If the assessment referred to in the first paragraph of this article is not concluded in time and the application of the conversion tool cannot be delayed any longer, Banka Slovenije shall, in accordance with the second paragraph of the previous article, apply the conversion tool and decide that new instruments of ownership be conferred on the eligible acquirers without the right to exercise the voting rights attached to these instruments.

(4) The provisions of the third to fifth paragraphs of Article 118 of this Act shall apply to the exercise of voting rights, until the authorisation to acquire a qualifying holding is granted, and to the treatment of ineligible holders of qualifying holdings if the authorisation is refused.

Article 114

(Claiming of new instruments of ownership in event of conversion)

(1) Within eight days of the issuance of the decision on conversion, Banka Slovenije shall propose that the decision on the increase in share capital via conversion be entered in the court register. When the increase in the share capital is entered in the court register, Banka Slovenije shall, in accordance with Article 249 of this Act, immediately publish on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (hereinafter: the agency) an invitation to eligible acquirers of new instruments of ownership to claim the new instruments of ownership conferred on them in accordance with the second paragraph of Article 112 of this Act. The invitation shall state the amount of the increase in the share capital arising from the conversion and the ratio between the new instruments of ownership and the liability subject to the conversion. The invitation shall also include notification that the resolution entity shall be entitled, after three announcements, to sell for the account of the eligible acquirers the instruments of ownership that the eligible acquirers fail to claim within one year of the publication of the invitation.

(2) Upon the expiry of one year from the publication of the invitation, the resolution entity shall publicly announce the sale of unclaimed instruments of ownership. This announcement shall be published three times at intervals of at least one month. The last announcement shall be published before the expiry of 18 months from the publication of the invitation.

(3) Upon the expiry of one year from the publication of the last announcement, the resolution entity shall sell the unclaimed instruments of ownership for the account of beneficiaries at a public auction or in a regulated market, if the instruments are admitted to trading in such a market. If the instruments are not admitted to trading in a regulated market and it is reasonable to expect that a public auction will not be successful, they may be sold in some other suitable manner.

Article 115

(Special powers concerning write-down and conversion)

(1) Banka Slovenije may carry out any administrative and procedural tasks in connection with the write-down and conversion tool to ensure the effectiveness of a write-down or conversion imposed in accordance with this Act. Depending on the circumstances of the case, Banka Slovenije may require the resolution entity to carry out the necessary administrative and procedural tasks itself.

(2) For the purposes of the previous paragraph, Banka Slovenije shall in particular:

1. cancel the existing instruments of ownership and debt instruments subject to the write-down or conversion, and instruct the Central Securities Clearing Corporation to delete the cancelled shares and debt instruments;

2. propose changes with regard to the share capital or other appropriate entry in the court register;

3. instruct the Central Securities Clearing Corporation to issue new shares and debt instruments;

4. request the delisting or removal from trading on a registered market of shares or other instruments of ownership and debt instruments;

5. request the listing or admission to trading on a registered market of new shares and other instruments of ownership;

6. request the relisting or readmission of debt instruments whose principal amount has been partly written down or converted, without prior publication of a prospectus, in accordance with the law governing the financial instruments market.

(3) Banka Slovenije may decide, with regard to the write-down and conversion tool, that the following two measures be implemented concurrently or individually with regard to the existing instruments of ownership:

1. the existing instruments of ownership shall be cancelled or transferred to new holders whose assets are used in the resolution of the resolution entity;

2. if, on the basis of a preliminary valuation carried out in accordance with the first paragraph of Article 80 of this Act, the resolution entity has a positive net asset value, the share of the existing instruments of ownership shall be substantially reduced in relation to the new instruments of ownership issued to beneficiaries whose assets are used in the resolution of the resolution entity, such that the attributable or nominal amount of the existing instruments is reduced accordingly and by applying the appropriate conversion rate from the conversion of capital instruments or eligible liabilities.

(4) In deciding on the exercise of the powers referred to in the previous paragraph, Banka Slovenije shall take into account the following:

1. the preliminary valuation of assets and liabilities in accordance with the first paragraph of Article 80 of this Act;

2. the amount of loss taken into account in the proportionate reduction of the amount of instruments of ownership in accordance with the first paragraph of Article 109 of this Act; and

3. the total amount of the capital required to restore the required Common Equity Tier 1 ratio of the bank or to provide the capital of the bridge bank.

(5) The debt instruments referred to in the second paragraph of this article shall be bonds and other forms of transferable debt, instruments creating or acknowledging a debt and instruments granting rights to acquire debt instruments.

2.4.3 Sale of business

Article 116

(Sale of business tool)

(1) In resolution proceedings Banka Slovenije may apply the sale of business tool by transferring the following to a recipient that is not a bridge bank:

1. shares or other instruments of ownership issued by the resolution entity; or

2. all or any assets, rights or liabilities of the resolution entity.

(2) The transfer referred to in the previous paragraph shall not require the consent of shareholders or holders of instruments of ownership issued by the resolution entity, or the consent of the creditor, debtor or any third party except the recipient.

(3) The transfers referred to in the first paragraph of this article shall be carried out pursuant to the decision of Banka Slovenije on the sale of business, taking into account the conditions provided in this Act, notwithstanding any different or additional requirements or restrictions regarding transfer provided by other regulations, the bylaws of the resolution entity, or on the basis of a contract.

(4) The sale of business referred to in the first paragraph of this article shall be carried out while taking into account the market conditions in accordance with Article 120 of this Act and the EU state aid rules.

(5) Any consideration provided by the recipient with regard to the sale of business, reduced by the costs charged in accordance with Article 15 of this Act, shall be credited to:

1. the owners of shares or other instruments of ownership if the sale of business has been carried out by transferring shares or instruments of ownership issued by the resolution entity from the holders thereof to the recipient;

2. the resolution entity if the sale of business has been carried out by transferring all or any assets, rights or liabilities of the resolution entity to the recipient.

(6) Banka Slovenije may apply the sale of business tool several times in order to ensure additional transfers to the same or different recipients.

(7) The provisions of Article 95 and Articles 153 to 155 of this Act shall apply to transfers carried out within the sale of business tool.

Article 117

(Retransfer)

(1) After applying the sale of business tool in accordance with the previous article, Banka Slovenije may decide, with the consent of the recipient, that certain assets, rights or liabilities that have been transferred from the resolution entity to the recipient or that the shares or other instruments of ownership that have been transferred from their holders to the recipient be transferred back to their original owners.

(2) No prior consent of the resolution entity or original owners of shares or other instruments of ownership shall be required for retransfer. The resolution entity or the original holders of shares or other instruments of ownership subject to retransfer may not refuse to take back the assets, rights or liabilities or the shares or other instruments of ownership concerned.

Article 118

(Treatment of qualifying holdings in transfer of instruments of ownership)

(1) If by virtue of the transfer of shares or other instruments of ownership within the application of the sale of business tool the recipient acquires or increases a qualifying holding in the bank, the recipient shall be required to obtain an authorisation to acquire or increase a qualifying holding in accordance with the law governing banking, normally before the application of the sale of business tool. Banka Slovenije may require that, depending on the circumstances of the case, the European Central Bank decide on the request for an authorisation to acquire a qualifying holding within a time limit that is shorter than the time limit provided in the law governing banking for deciding on the authorisation to acquire a qualifying holding.

(2) If the decision-making process regarding the recipient’s request referred to in the previous paragraph is not concluded in time and the application of the sale of business tool cannot be delayed any longer, Banka Slovenije shall apply the sale of business tool and transfer the instruments of ownership to the recipient without the right to exercise the voting rights attached to these instruments.

(3) In the case referred to in the previous paragraph, the voting rights shall be exercised by Banka Slovenije. Banka Slovenije shall not be obliged to exercise the voting rights and shall not be liable to the recipient for exercising or refraining from exercising them. The voting rights shall be transferred to the recipient when the recipient obtains the authorisation of the European Central Bank to acquire a qualifying holding and informs Banka Slovenije accordingly.

(4) If the request for an authorisation to acquire a qualifying holding is refused, Banka Slovenije may require the recipient to dispose of the instruments of ownership concerned within a specified time limit. In determining the time limit, Banka Slovenije shall take into account the prevailing market conditions. The purchaser shall acquire the voting right attached to the instruments of ownership concerned when Banka Slovenije is notified of the transfer of the instruments to the purchaser and of any authorisation of the European Central Bank to acquire or increase a qualifying holding.

(5) If in the case referred to in the previous paragraph the recipient does not dispose of the instruments of ownership concerned within the specified time limit, the recipient shall be treated as an ineligible holder of a qualifying holding after the expiry of this time limit. In this event Banka Slovenije shall impose on the recipient appropriate supervisory measures in accordance with the law governing banking.

Article 119

(Rights related to transfer)

(1) Upon the transfer of the assets, rights or liabilities of the resolution entity within the sale of business tool, the recipient shall need an appropriate authorisation to carry out the business with regard to the assets, rights and liabilities transferred. Requests for the authorisation of the competent authority made by the future recipient shall be treated as a priority, having regard for the urgency of the resolution actions with regard to the resolution entity.

(2) When assets, rights and liabilities related to the provision of banking and financial services are transferred to the recipient within the sale of business tool, the recipient shall be considered to be a legal successor of the resolution entity with regard to the right to directly provide services and the right of establishment, and may exercise any right exercised on this basis by the original owner.

(3) Within its operations with regard to the assets, rights and liabilities transferred, the recipient may continue to exercise the right to membership of and access to payment, clearing and settlement systems, the regulated market, investor compensation schemes and the deposit guarantee schemes of the institution in resolution proceedings, provided that it meets the membership criteria and criteria for participation in such systems.

(4) If the recipient does not meet the membership or participation criteria for the relevant system or scheme referred to in the previous paragraph, Banka Slovenije may decide that the recipient be allowed temporary membership in or access to the system for a period of no more than 24 months. At the proposal of the recipient, Banka Slovenije may extend the period of temporary membership in a certain system or scheme by a maximum of 12 months.

(5) Notwithstanding the third and fourth paragraphs of this article, the access to a system or scheme may not be denied solely on the grounds that the purchaser does not possess a rating from a credit rating agency, or that its rating is not commensurate with the level required to be granted access to the system or scheme concerned.

(6) The shareholders or holders of instruments of ownership, the creditors of the resolution entity and other persons making claims in relation to the resolution entity may not exercise any rights to or in relation to the assets, rights or liabilities transferred.

Article 120

(Procedural requirements concerning sale of business)

(1) Banka Slovenije shall adopt any reasonable measures to carry out a transfer within the sale of business tool under market conditions, having regard for the circumstances of the case and the preliminary valuation in accordance with Article 80 of this Act.

(2) In applying the sale of business tool to the resolution entity, Banka Slovenije shall market or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of the resolution entity that it intends to transfer. Assets, rights, liabilities, shares or other instruments of ownership may be marketed individually or jointly in one or several offers (a combined offer).

(3) In marketing within the framework of the sale of business tool, Banka Slovenije shall take into account the following criteria:

1. ensuring the transparency and proper presentation and representation of the assets, rights, liabilities, shares or other instruments of ownership that are the subject of the offer, having regard for the circumstances of the case and, in particular, the need to maintain financial stability;

2. preventing the undue favouring of or discriminating against a potential recipient;

3. preventing any conflict of interest;

4. preventing the granting of an unfair advantage to any potential recipient;

5. taking account of the need to effect a rapid resolution action;

6. achieving the highest possible transfer price.

(4) The criteria referred to in the previous paragraph do not exclude the option of only addressing the offer to certain potential recipients if this does not unduly favour or discriminate against any potential recipients.

(5) Having regard for Articles 17(4) and 17(5) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1), last amended by Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1) (hereinafter: Regulation 596/2014/EU), Banka Slovenije may delay public disclosure of the inside information of the resolution entity with regard to the marketing of assets, rights, liabilities, shares or other instruments of ownership within the sale of business tool.

(6) Notwithstanding the first paragraph of this article, Banka Slovenije may apply the sale of business tool in relation to the resolution of the resolution entity without complying with the requirements concerning marketing referred to in the first to third paragraphs of this article if compliance with these requirements would likely undermine one or more of the resolution objectives, or Banka Slovenije assesses that the following conditions are met:

1. there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the bank in resolution proceedings; and

2. compliance with the requirements concerning marketing under the first to third paragraphs of this article would likely undermine the effectiveness of the sale of business tool in addressing the threat to financial stability or in achieving the resolution objectives.

2.4.4 Bridge bank

Article 121

(Bridge bank tool)

(1) The bridge bank shall be a legal person established and exclusively managed by Banka Slovenije in accordance with this Act with a view to receiving and holding the shares or assets, rights, liabilities and contractual relationships of banks under resolution.

(2) By taking into account the requirement to maintain the continuity of the critical functions of a bank under resolution, Banka Slovenije shall, within the bridge bank tool, transfer to the bridge bank:

1. shares or other instruments of ownership issued by one or more banks under resolution; or

2. all or any assets, rights and liabilities, including the contractual relationships, of one or more banks under resolution.

Article 122

(Establishment of bridge bank)

(1) A bridge bank shall be established:

1. as a bank in accordance with the law governing banking when the assets, rights and liabilities are transferred from a bank under resolution to the bridge bank in order to ensure the continuation of the critical functions of the bank; or

2. as a public limited company or private limited company operating as a holding company in accordance with the law governing companies, when shares and other instruments of ownership issued by a bank under resolution are transferred to the bridge bank.

(2) The initial capital of the bridge bank shall be provided in the following ways:

1. by converting the capital instruments or eligible liabilities of the resolution entity when eligible holders are provided shares or holdings in the bridge bank within the conversion of capital instruments or eligible liabilities tool;

2. from the funds of the Single Resolution Fund established in accordance with Regulation 806/2014/EU; or

3. from other public funds in accordance with applicable regulations, or funds provided by predominantly state-owned entities.

(3) Notwithstanding the source of the initial capital of and the holding of shares or holdings in the bridge bank, the competences and powers of the general meeting of the bridge bank shall be exercised exclusively by Banka Slovenije.

(4) With regard to the management of the bridge bank, Banka Slovenije, in the role of the general meeting, shall in particular:

1. adopt the constitutional documents of the bridge bank;

2. appoint the management bodies of the bridge bank, taking into account the ownership structure of the bridge bank, whenever possible;

3. determine the remuneration and responsibilities of the members of the management bodies;

4. approve the strategy and risk profile of the bridge bank.

(5) Notwithstanding the provisions of the law governing companies and of the law governing banking concerning the exercise of the powers of the general meeting and the supervisory board, Banka Slovenije shall adopt the decisions concerning the exercise of the powers of the general meeting and the supervisory board of the bridge bank in the form of resolutions under the law governing Banka Slovenije. The provisions of the third and fourth paragraphs of Article 135 of this Act shall apply to the exercise of the powers of the general meeting of the bridge bank.

Article 123

(Establishment of bridge bank to carry out activities of bank)

(1) The provisions of the law governing banking shall apply to a bridge bank established as a bank and the provisions of Regulation 575/2013/EU to the establishment and operation of the bank, unless explicitly determined otherwise by this Act.

(2) The transfer of the assets, rights, liabilities and contractual relationships of a bank under resolution to a bridge bank shall be carried out when the bridge bank obtains an authorisation to provide services and operate as a bank.

(3) Notwithstanding the first and second paragraphs of this article, the bridge bank referred to in the first paragraph of this article may obtain the authorisation to provide banking and financial services even if upon its establishment it does not meet all the conditions for the authorisation determined by the law governing banking when grounds exist for assuming that it will be able to meet these conditions in a specified short period and that early authorisation to establish a bridge bank is necessary to achieve the resolution objectives.

(4) In the case referred to in the previous paragraph, Banka Slovenije shall notify the European Central Bank of the reasons for early authorisation to establish a bank. When the authorisation to establish a bridge bank is issued early, the decision on the authorisation shall state the time limit by which the bridge bank must ensure that all conditions provided by the law governing banking are met.

(5) The provisions of the law governing banking and of Regulation 1024/2013/EU concerning banking supervision shall apply to supervision of the operation of a bridge bank operating as a bank.

Article 124

(Transfer to bridge bank)

(1) The transfer of the assets, rights, liabilities and contractual relationships of a bank under resolution to a bridge bank shall be carried out pursuant to a decision of Banka Slovenije, notwithstanding any different or additional requirements and restrictions regarding the transfer of particular items provided by other regulations, internal regulations of the resolution entity, or on the basis of a contract. The transfer to the bridge bank shall not require the consent of the shareholders or holders of the instruments of ownership being transferred, nor the consent of the creditor, debtor or any third party exercising its rights in respect of the assets, rights or liabilities being transferred.

(2) In the transfer to the bridge bank, Banka Slovenije shall ensure that the total value of the liabilities being transferred to the bridge bank does not exceed the total value of the rights and assets transferred from the resolution entity to the bridge bank or provided to the bridge bank from other sources.

(3) Any consideration provided by the bridge bank with regard to the transfer, reduced by the costs charged in accordance with Article 15 of this Act, shall be credited to:

1. the owners of shares or other instruments of ownership when the shares or instruments of ownership issued by the resolution entity are being transferred to the bridge bank; or

2. the bank under resolution, when all or any assets, rights and liabilities of the bank under resolution are being transferred to the bridge bank.

(4) Within the bridge bank tool, Banka Slovenije may exercise the power to carry out a transfer several times in order to ensure additional transfers of shares or other instruments of ownership or assets, rights or liabilities of the resolution entity.

(5) The provisions of Article 95 and Articles 153 to 155 of this Act concerning safeguards shall apply to the transfers carried out within the bridge bank tool.

(6) The shareholders or creditors of the bank under resolution and other persons whose assets, rights and liabilities are not transferred to the bridge bank during the resolution proceedings may not exercise any rights to the assets, rights and liabilities transferred to the bridge bank, or in connection with therewith, or in relation to the members of the management bodies or senior management of the bridge bank, except to the extent referred to in the previous paragraph.

Article 125

(Retransfer)

(1) Following the transfer to the bridge bank in accordance with the previous article, Banka Slovenije may decide on a retransfer, taking into account the conditions referred to in the second paragraph of this article, such that:

1. all or any assets, rights or liabilities transferred to the bridge bank are transferred back to the bank under resolution; or

2. the shares or other instruments of ownership transferred to the bridge bank are transferred back to the original holders.

(2) Banka Slovenije shall decide on the retransfer referred to in the previous paragraph in the following cases:

1. the possibility of retransferring shares or other instruments of ownership, assets, rights or liabilities is explicitly provided by Banka Slovenije’s decision on the transfer thereof to the bridge bank; or

2. particular shares or other instruments of ownership, assets, rights or liabilities do not belong to the class of shares or other instruments of ownership, assets, rights or liabilities determined by the decision of Banka Slovenije on the transfer to the bridge bank, or they do not meet the conditions for a transfer to the bridge bank as defined by the aforementioned decision.

(3) Retransfer may be carried out in any period of time under any other conditions defined for the purposes of retransfer by the transfer decision.

(4) No prior consent of the bank under resolution or original holders of shares or other instruments of ownership of the bank under resolution shall be required for retransfer. The bank under resolution or the original holders of shares or other instruments of ownership subject to retransfer may not refuse to take back the assets, rights or liabilities or shares or other instruments of ownership concerned.

Article 126

(Operation of bridge bank)

(1) The management board of a bridge bank shall manage and represent the bridge bank with the aim of maintaining access to the critical functions and selling the shares of the bridge bank or the shares of the bank under resolution, and other instruments of ownership, assets, rights and liabilities acquired by the bridge bank to one or more private purchasers, having regard for the EU state aid rules. In so doing the bridge bank’s management board shall comply with the instructions of Banka Slovenije.

(2) For the purposes of the previous paragraph, Banka Slovenije may decide that the shares or other instruments of ownership of the bank under resolution or the assets, rights and liabilities acquired by the bridge bank be transferred from the bridge bank to a third party. The provisions of Article 124 of this Act shall apply *mutatis mutandis* to the effects of the transfer to a third party.

(3) The sale of the bridge bank or its assets, rights, liabilities or contractual relationships shall be ensured on the basis of transparent sale procedures, such that:

1. the accuracy and integrity of the information concerning the sale is ensured;

2. the undue favouring of or discrimination against any potential purchasers is prevented;

3. the sale is carried out under market conditions, having regard for the circumstances of the case and in accordance with applicable regulations;

4. any conflict of interest is prevented;

5. the highest possible sale price is achieved.

(4) In pursuing the objectives referred to in the first paragraph of this article, the bridge bank shall not accept any responsibility or liability towards shareholders, holders of other ownership interests, creditors or other persons related to the bank under resolution. The members of the management body and the senior management of the bridge bank, shall not be responsible, in relation to the shareholders of the bank under resolution, the holders of other ownership interests, creditors or other parties related to the bank under resolution, for acts or omissions in performing their functions, except when the act or omission constitutes gross negligence or wilful misconduct according to domestic law that directly affects the rights of the aforementioned persons.

Article 127

(Other consequences of transfer to bridge bank)

(1) When during resolution the assets, rights or liabilities related to the provision of banking and financial services of the bank under resolution are transferred to a bridge bank, the bridge bank shall be considered the legal successor of the bank under resolution with regard to the right to directly provide services and the right of establishment in another Member State, and may exercise any right exercised by the bank under resolution on this basis in accordance with the law governing banking. In its decision on the transfer, Banka Slovenije may determine that the bridge bank be considered the legal successor of the bank under resolution.

(2) Within its operations as a bank on the basis of the succession referred to in the previous paragraph, the bridge bank may continue to exercise the right to membership of and access to the payment, clearing and settlement systems, the regulated market, the investor compensation schemes and deposit guarantee schemes of the institution in resolution proceedings, provided that it meets the membership criteria and criteria for participation in such systems.

(3) Where the bridge bank does not meet the membership or participation criteria for a particular payment, clearing or settlement system, regulated market, investor compensation scheme or deposit guarantee scheme, Banka Slovenije may decide to nevertheless grant the bridge bank temporary membership or participation in the particular payment, clearing or settlement system, regulated market, investor compensation scheme or deposit guarantee scheme for a period not exceeding 24 months. At the proposal of the recipient, Banka Slovenije may extend the period of temporary membership by a maximum of 12 months.

(4) Notwithstanding the second and third paragraphs of this article, access to a payment, clearing or settlement system, regulated market, investor compensation scheme or deposit guarantee scheme may not be denied solely on the grounds that the bridge bank does not possess a rating from a credit rating agency, or that its rating is not commensurate with the level required to be granted access to the system or scheme concerned.

Article 128

(Winding-up of bridge bank)

(1) Banka Slovenije shall decide on the winding-up of a bridge bank in the following cases:

1. the bridge bank merges with another private entity so that Banka Slovenije no longer exercises supervisory powers for the purposes of the resolution of the merged entity or with regard to the management of the shares of the bridge bank paid up from the sources referred to in the second paragraph of Article 122 of this Act;

2. the shares of the bridge bank paid up from the sources referred to in the second paragraph of Article 122 of this Act are transferred in full to private investors, including transfer within the merger of the bridge bank with another private entity such that Banka Slovenije no longer exercises powers with regard to the management of the transferred shares or the merged entity;

3. all or the major part of the shares, assets, rights or liabilities transferred to the bridge bank are sold to a private purchaser;

4. the bridge bank’s assets are completely exhausted and its liabilities are completely discharged;

5. upon the expiry of two years from the date of the last transfer to the bridge bank.

(2) Notwithstanding point 5 of the previous paragraph, Banka Slovenije may decide on the winding-up of the bridge bank before the expiry of the two-year period when it assesses that it is not possible to achieve any of the outcomes referred to in points 1 to 4 of the previous paragraph within this time limit.

(3) Banka Slovenije may extend the period referred to in point 5 of the first paragraph of this article several times, each time for no more than one year, if such an extension is necessary:

1. in order to make the winding-up of the bridge bank possible on the basis of points 1 to 4 of the first paragraph of this article; or

2. to ensure the continuity of the essential services of the bank under resolution.

(4) Banka Slovenije shall state the reasons for the decision referred to in the previous paragraph and a detailed assessment of the situation, including an assessment of the market situation and outlook justifying the extension of the period referred to in point 5 of the first paragraph of this article.

(5) If Banka Slovenije decides on the winding-up of the bridge bank for the reasons referred to in points 3 to 5 of the first paragraph of this article, the bridge bank shall be wound up under normal insolvency proceedings. Any proceeds from the termination of the operation of the bridge bank, reduced by the costs charged in accordance with Article 15 of this Act, shall be credited to the shareholders of the bridge bank.

(6) If the assets and liabilities of more than one bank under resolution are transferred to the bridge bank, the previous paragraph shall apply to this bridge bank with regard to the assets and liabilities transferred from each bank under resolution but not with regard to the bridge bank.

2.4.5 Asset separation

Article 129

(Asset separation tool)

(1) Banka Slovenije shall apply the asset separation tool to transfer the assets, rights and liabilities of a resolution entity or a bridge bank, including contractual relations, to an asset management vehicle.

(2) Banka Slovenije shall apply the asset separation tool in the following cases:

1. if, due to the situation in a market for these assets, the liquidation of such assets in accordance with the normal insolvency proceedings could have a negative impact on one or more financial markets;

2. if the transfer of assets, rights or liabilities is required to ensure the smooth operation of the resolution entity or of the bridge bank; or

3. if a transfer is required to ensure maximum liquidation proceeds.

(3) The asset management vehicle shall be a legal person established and exclusively managed by Banka Slovenije with a view to receiving and holding the resolution entity’s or the bridge bank’s assets, rights, liabilities and contractual relationships. The asset management vehicle shall not provide banking services.

(4) When a bridge bank is established for resolution in accordance with this Act, the bridge bank may receive and hold the assets, rights and liabilities of a resolution entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act as an asset management vehicle, unless this could jeopardise attainment of the bridge bank’s objectives.

Article 130

(Establishment of asset management vehicle)

(1) Banka Slovenije shall establish an asset management vehicle as a company with share capital. The provisions of the law governing companies shall apply to the establishment and operation of the asset management vehicle, unless otherwise laid down by this Act.

(2) The initial capital of an asset management vehicle shall be provided in the following ways:

1. by converting the resolution entity’s capital instruments or eligible liabilities when eligible holders are provided with shares of or holdings in an asset management vehicle within the framework of the application of the tool of conversion of capital instruments or eligible liabilities;

2. from the funds of the Single Resolution Fund established in accordance with Regulation 806/2014/EU; or

3. from other public funds in accordance with applicable regulations, or funds provided by predominantly state-owned entities.

(3) The provisions of the third to fifth paragraphs of Article 122 of this Act relating to the management of the bridge banks and the competences of Banka Slovenije regarding the management of the bridge bank shall apply *mutatis mutandis* to the management of the asset management vehicle.

Article 131

(Transfer to asset management vehicle)

(1) Transfer to an asset management vehicle shall be carried out in accordance with a decision of Banka Slovenije, notwithstanding any different or additional requirements or restrictions provided in respect of the transfer of individual items by other regulations, internal regulations of a bank under resolution, or on the basis of a contract. Transfer to an asset management vehicle shall not require the consent of the shareholders or holders of equity instruments issued by the resolution entity, or the consent of a creditor, debtor or any third party exercising its rights in respect of the assets, rights or liabilities that are being transferred.

(2) When transferring assets, rights and liabilities to the asset management vehicle, Banka Slovenije shall determine the transfer fee by taking into account the valuation performed in accordance with the principles referred to in Article 82 of this Act and the EU state aid rules. The transfer fee can have a positive or negative nominal value, taking into account the assessed value of the transferred assets and liabilities, on the one hand, and the value of the transferred liabilities on the other.

(3) Any transfer fee paid by the asset management vehicle for the assumed assets, rights and liabilities to the resolution entity shall be reduced by the costs charged for resolution in accordance with Article 15 of this Act and credited to the resolution entity. The payment of a transfer fee may be made in the form of debt instruments issued by the asset management vehicle.

(4) Banka Slovenije may use the same authorisation for transfer a number of times within the asset separation tool in order to provide additional assets, rights and liabilities to the asset management vehicle.

(5) The provisions of Article 95 and Articles 153 to 155 of this Act relating to protective measures shall apply to the transfers carried out within the asset separation tool.

(6) Shareholders and creditors of the resolution entity and other persons whose assets, rights and liabilities are not transferred to the asset management vehicle during resolution proceedings may not exercise any rights to the assets, rights and liabilities transferred to the asset management vehicle, or in connection with therewith, or in relation to the members of the management bodies or senior management of the bridge bank, except to the extent referred to in the previous paragraph.

Article 132

(Retransfer)

(1) Following the transfer to the asset management vehicle, Banka Slovenije may decide to transfer all assets, rights or liabilities, including contractual relationships that have been transferred to the asset management vehicle, back to the resolution entity, having regard for the conditions referred to in the second paragraph of this article. The resolution entity may not refuse to accept the assets, rights, liabilities and contractual relationships that are the subject of such retransfer.

(2) Banka Slovenije shall decide on the retransfer referred to in the previous paragraph in the following cases:

1. if the possibility of retransferring assets, rights and liabilities is explicitly provided by Banka Slovenije’s decision on their transfer to the asset management vehicle; or

2. if an asset, right or liability does not actually belong to a class of assets, rights or liabilities determined by Banka Slovenije’s decision on transfer to the asset management vehicle, or if an asset, right or liability does not meet the conditions for transfer to a bridge bank as defined by this decision.

(3) Retransfer may be carried out in any period of time under any other conditions defined for the purposes of retransfer by the transfer decision.

(4) Retransfer shall not require the prior consent of the shareholders or holders of equity instruments issued by the resolution entity, or the consent of a creditor, debtor or any third party exercising its rights in respect of the assets, rights or liabilities that are being transferred. The bank under resolution, the original holders of shares or other instruments of ownership, and creditors, debtors or any third parties exercising rights in respect of the assets, rights or liabilities subject to retransfer may not refuse to accept the assets, rights or liabilities or shares or other instruments of ownership concerned.

Article 133

(Operations of asset management vehicle)

(1) The management board of an asset management vehicle shall manage and represent the company with a view to achieving the maximum value of the transferred assets:

1. by selling the asset management vehicle, i.e. the assets, rights and liabilities received by the asset management vehicle, or

2. by winding up the asset management vehicle in normal insolvency proceedings.

(2) The management board of the asset management vehicle shall follow the instructions of Banka Slovenije.

(3) The second to fourth paragraphs of Article 126 of this Act shall apply *mutatis mutandis* to the operations of an asset management vehicle.

(4) The provisions of Article 128 of this Act relating to the winding-up of a bridge bank shall apply *mutatis mutandis* to the winding-up of an asset management vehicle.

2.5 Consequences of entry into resolution and powers for the implementation of resolution actions

2.5.1 General consequences of entry into resolution

Article 134

(Occurrence and duration of legal consequences of entry into resolution and implementation of resolution actions)

(1) The legal consequences of entry into resolution shall arise for a resolution entity when it is served with a Banka Slovenije decision on entry into resolution.

(2) The legal consequences of entry into resolution that affect the legal status of other persons or the implementation of other proceedings shall arise on the date of publication of the decision to initiate resolution proceedings in accordance with Article 249 of this Act.

(3) The legal consequences of entry into resolution shall last until the date of issue of the decision terminating the resolution proceedings or until the initiation of normal insolvency proceedings against the resolution entity.

(4) Legal consequences resulting from imposed resolution actions shall arise for the resolution entity, shareholders, creditors and other persons on the day of publication of the decision to apply resolution tools or other powers in accordance with Article 249 of this Act.

Article 135

(Competences of resolution entity’s bodies during resolution)

(1) The powers and competences of a resolution entity’s supervisory board and the general meeting shall terminate upon the initiation of resolution proceedings. The management board of the resolution entity shall follow Banka Slovenije’s instructions in connection with management and representation, and shall obtain Banka Slovenije’s prior consent with regard to the management and disposal of the resolution entity’s assets.

(2) When necessary for a bank’s compliance with its obligations under other regulations, the powers of the resolution entity’s general meeting and the supervisory board shall be exercised by Banka Slovenije. Notwithstanding the provisions of the law governing companies and the law governing banking with regard to the exercise of the powers of the resolution entity’s general meeting and supervisory board, Banka Slovenije shall adopt the decisions referred to in the previous paragraph concerning the exercise of the powers of the general meeting and of the supervisory board in the form of resolutions in accordance with the law governing Banka Slovenije.

(3) The provisions of the law governing companies with regard to the convening of the general meeting and the decision-making at the general meeting and to contesting and enforcing the nullity of the general meeting’s decisions shall not apply to the powers of the general meeting exercised by Banka Slovenije in accordance with the previous paragraph.

(4) Within three business days of the issuance of the decision on entry into resolution, Banka Slovenije shall apply for registration of the decision on the exercise of the powers of the general meeting with the court for the purposes of its publication under the rules on the publication of the minutes of the general meeting of a public limited company.

Article 136

(General restriction on operations of resolution entity)

(1) After the initiation of resolution proceedings, the resolution entity may only conduct its regular business and meet its liabilities that arise in the normal course of business, unless provided otherwise by law or by Banka Slovenije in the exercise of the powers conferred on it by this Act.

(2) Notwithstanding the previous paragraph, the bank shall not perform the following without Banka Slovenije’s prior approval after the initiation of resolution proceedings:

1. pay the principal and any interest on the bank’s capital instruments, even when the payment of such liabilities becomes due under a contract;

2. pay the principal and any interest falling due on eligible liabilities, even when the payment of such liabilities becomes due under a contract;

3. dispose of its assets and issue guarantees or other sureties, except within the scope of the execution of banking transactions;

4. execute business transactions or other actions that could result in the unequal treatment of creditors and impede the implementation of resolution actions.

Article 137

(Restrictions on application of individual contractual arrangements)

(1) If, in the event of the application of resolution actions or the exercise of individual powers in connection with resolution pursuant to this Act, essential obligations under the contract concluded between the resolution entity and a counterparty, including the obligations of payment and delivery and the provision of a collateral, continue to be met under the said contract after the initiation of resolution proceedings, the application of these actions shall not *per se* be deemed to be:

1. non-performance or some other similar event agreed upon by the parties, on the basis of which the collateral taker is entitled to call a guarantee or exercise their right to early offset in accordance with the law governing financial collateral;

2. an insolvency event or other measure excluding or restricting the execution of orders issued by a payment system member in accordance with the law governing payment services and systems.

(2) The previous paragraph shall also apply to contracts concluded by other entities in the group, with the exception of the resolution entity, as follows:

1. a subsidiary whose obligations are guaranteed or otherwise supported by the parent undertaking or by any group entity; or

2. any group entity when the contract includes cross-default provisions.

(3) If, in the event of the exercise of powers to suspend obligations in accordance with Article 86 of this Act, the application of resolution actions or the exercise of individual powers in connection with resolution pursuant to this Act, essential obligations under the contract concluded between the resolution entity and a counterparty, including the obligations of payment and delivery and the provision of a collateral, continue to be met under the said contract, the application of these actions shall not *per se* make it possible for anyone to:

1. exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

* a subsidiary whose obligations are guaranteed or otherwise supported by a group entity,
* any group entity when the contract includes cross-default provisions;

2. obtain possession of, exercise control of or enforce any security over any property of the resolution entity or any group entity in connection with a contract that includes cross-default provisions;

3. affect the contractual rights of the resolution entity or any group entity in connection with a contract that includes cross-default provisions.

(4) This article shall not affect the right of individuals to exercise their rights referred to in the previous paragraph if the exercise thereof is not due solely to the initiation of resolution proceedings or the application of other actions and powers in the course of resolution proceedings, but arises from other circumstances.

(5) When Banka Slovenije exercises the powers of suspension or restriction referred to in Articles 86 to 90 of this Act and Articles 149 to 151 of this Act, the suspension or restriction that results from the decision shall not entail non-performance of contractual obligations in the sense of the first and third paragraphs of this article or for the purposes of the implementation of Article 151 of this Act.

(6) When a third country’s resolution proceedings are recognised in accordance with Article 273 of this Act, the exercise of powers within the framework of these proceedings shall be considered the implementation of resolution actions for the purposes of this article.

Article 138

(Consequences for initiating and conducting other proceedings)

(1) Normal insolvency proceedings cannot be initiated under the law governing financial operations, insolvency proceedings and compulsory winding-up after the initiation of the resolution proceedings against an entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act, except on the basis of a request submitted to the competent court by Banka Slovenije.

(2) When a resolution tool is used in resolution proceedings, including a transfer of assets, rights or liabilities of a bank or a resolution entity to another person, these transactions or actions cannot be contested in any subsequent normal insolvency proceedings initiated against that resolution entity.

(3) When a resolution entity is involved as a party in judicial or administrative proceedings that are still pending before a court or other body, Banka Slovenije may request that the competent court or body stay the decision-making procedure for a specified period of time if the staying of such procedure is necessary for efficient use of resolution tools and powers.

(4) The court or other body shall continue the decision-making procedure referred to in the previous paragraph:

1. upon receipt of Banka Slovenije’s notice that grounds for staying no longer exist, or

2. upon the termination of resolution proceedings.

2.5.2 Special management

Article 139

(Special management)

(1) Banka Slovenije may appoint special management to take over the management of a bank that meets the conditions for resolution.

(2) In its decision to appoint special management, Banka Slovenije shall take into account the objectives and principles of resolution, depending on the circumstances of the case, particularly in relation to cross-border group resolution. Special management at a bank shall not be a preliminary condition for the implementation of resolution actions.

(3) Notwithstanding other regulations governing the powers of members of the management board, when a decision appointing special management is served upon a bank:

1. the terms of office of all members of the bank’s management board and supervisory board, and the powers and competences of members of the bank’s management board and procurators to direct the business and to represent the bank shall be terminated; and

2. Banka Slovenije shall, acting in the capacity of a special manager, assume the powers and competences to direct the business and represent the bank.

(4) In the exercise of its powers as the special manager of a bank, Banka Slovenije may also decide to dismiss or replace the bank’s senior management.

(5) Pursuant to the decision to appoint special management, the following shall be entered in the court register:

1. the termination of powers of the members of the management board and procurators to represent the bank; and

2. the persons authorised to represent the bank on the basis of the decision to appoint special management.

(6) Banka Slovenije shall notify the register court having territorial jurisdiction to decide on entries in the court register on behalf of the bank about the decision to appoint special management on the day following the date of issue of such decision. Banka Slovenije shall send the notification to the electronic address of the register court and attach to it a copy of its decision, which serves as the basis for the occurrence of the legal fact that is the subject of registration.

Article 140

(Exercise of powers of special management)

(1) Banka Slovenije shall exercise the powers of special management either directly or indirectly by appointing one or more special managers for the bank.

(2) When Banka Slovenije exercises the powers of special management directly, the Governing Board of Banka Slovenije, represented by the Governor of Banka Slovenije, shall represent the bank, direct its business and exercise the powers of the supervisory board and the general meeting of the bank. The Governing Board of Banka Slovenije may authorise other persons to exercise certain tasks and powers relating to the representation of the bank.

(3) For the purposes of other regulations governing the governance and operation of companies, members of the Governing Board of Banka Slovenije shall not be treated as members of the management board or supervisory board of a bank in which Banka Slovenije directly performs the functions and exercises the powers of special management after the appointment of special management for that bank. Banka Slovenije shall not assume the functions and responsibilities of a member of the management board or the supervisory board as defined by the law governing companies or other regulations.

(4) Notwithstanding the provisions of the law governing companies or the law governing banking with regard to the exercise of the powers of a bank’s management board and supervisory board, Banka Slovenije shall adopt the decisions concerning the exercise of such powers by special management in the form of regulations pursuant to the law governing Banka Slovenije.

Article 141

(Appointment of special managers)

(1) Banka Slovenije shall appoint a person who is professionally qualified and has the necessary knowledge, skills and experience to perform the functions and tasks of a special manager at a bank.

(2) Special managers shall be entitled to remuneration for their work performed in the resolution proceedings at the bank. The remuneration of special managers shall be determined by Banka Slovenije.

(3) If the resolution authorities responsible for the resolution of group entities propose the appointment of special managers at different group entities, Banka Slovenije shall examine the possibility of appointing as a special manager a person that performs the same duty in other group entities provided that this facilitates the implementation of the measures for restoring the financial soundness of the group entities.

(4) Special managers shall be liable for supervision of the financial situation under the law governing integrity and prevention of corruption. The provisions of the law governing integrity and prevention of corruption shall apply to the procedures for persons obliged to report their financial situation, changes in their financial situation and the implementation of supervision of the financial situation of obliged persons under the previous paragraph. The deadlines related to the supervision of the financial situation under the law governing integrity and prevention of corruption shall commence in relation to the duty of each special management member on the day when they assume their position.

Article 142

(Powers of special managers)

(1) The decision to appoint special managers issued by Banka Slovenije shall define the powers and responsibilities of the special managers. Special managers shall exercise their powers and tasks in accordance with Banka Slovenije’s instructions.

(2) When Banka Slovenije appoints more than one special manager to represent a bank and direct its business, special managers shall represent the bank jointly and direct its business as the bank’s management board. In its decision on the appointment of special management, Banka Slovenije may define the powers and responsibilities of each special manager for independent representation and direction of the bank’s business.

(3) Banka Slovenije may amend, restrict or revoke the powers of each special manager, or dismiss each special manager and appoint a new one.

(4) In accordance with the powers conferred on them by Banka Slovenije, special managers shall take all measures that are necessary to attain the resolution objectives and to ensure the implementation of individual resolution tools, notwithstanding any other regulation or bylaw governing the powers of the bodies responsible for the implementation of specific measures and activities. When a special manager proposes to take measures to increase a bank’s share capital, change a bank’s share ownership structure or make changes to a bank’s articles of association, such measures may only be adopted subject to Banka Slovenije’s prior consent.

Article 143

(Reports by special manager)

(1) Within two months of their appointment, a special manager shall submit to Banka Slovenije a report on the bank’s financial situation and business conditions under special management, attaching the following:

1. an action plan for the purpose of resolving the bank, the deadlines for implementing the planned actions, and an estimate of the cost to implement such actions;

2. a plan of the measures for the redistribution and dispersion of the bank’s potential losses; and

3. an assessment of contingent expenses that could affect the bank’s liabilities or operations.

(2) Special managers shall report to Banka Slovenije on the implementation of resolution actions within the specified time limits. Special managers shall immediately report to Banka Slovenije on all material circumstances that impact the bank’s business conditions during the mandate of the special management, and the realisation of the resolution objectives.

(3) Special managers shall immediately inform Banka Slovenije, the Commission for the Prevention of Corruption and the law enforcement authorities of any suspicion of corrupt and criminal acts that special managers have observed within the scope of their work or have been informed of.

Article 144

(Status of dismissed members of bank’s management board)

(1) Upon the appointment of special management, the dismissed members of the bank’s management board shall forthwith hand over the business to the special managers and allow them access to all of the bank’s business and other documentation and draw up a handover report. The members of the bank’s management board shall provide the special managers with all explanations or additional reports and information on the bank’s operations at their request.

(2) The dismissed members of the bank’s management board shall not be entitled to reimbursements or other compensation provided for by the bank’s bylaws or agreed upon by contracts between the bank and members of the management board in the event of early termination or dismissal from the position of a member of the bank’s management board.

Article 145

(Duration of mandate of special management)

(1) The special management shall be appointed at a bank for a maximum period of one year; its mandate may be extended, for a maximum of one year on each occasion, if the conditions for special management still exist and such extension is deemed necessary to achieve the resolution objectives, but to no later than the completion of resolution.

(2) The total mandate of the special management may not be longer than three years from the appointment of the special management.

(3) The special management shall draw up a final report on the bank’s operations under special management within two months of the termination of its function; the report shall in particular include information on the actions implemented, a description of the effects and a review of the costs incurred.

2.5.3 Ancillary powers in resolution proceedings

Article 146

(General powers for implementation of resolution actions)

(1) In order to ensure the efficiency of resolution actions or the achievement of one of more resolution objectives, Banka Slovenije may exercise the following powers:

1. deciding that financial instruments, assets, rights and liabilities should be transferred without imposing additional liabilities or encumbrances affecting the transferred financial instruments, rights, assets or liabilities, except liabilities and encumbrances secured by a guarantee agreement in accordance with the first paragraph of Article 154 of this Act;

2. deciding to terminate any pre-emption rights of shareholders to new shares or other instruments of ownership, or to remove other rights of beneficiaries to acquire new shares or other instruments of ownership of the resolution entity;

3. requiring the operator of a regulated market or of a multilateral trading system, as defined by the law governing the financial instruments market, to temporarily suspend trading in a financial instrument or to withdraw a financial instrument from trading on a regulated market, or to temporarily suspend the admission of financial instruments to official listing;

4. deciding that a recipient to which shares, other instruments of ownership, debt instruments, assets, rights and liabilities are transferred shall be treated in the same way as the resolution entity for the purpose of exercising any rights or obligations held by the resolution entity, including the right to participate in or become a member of payment and settlement systems;

5. demanding that the resolution entity and the recipient to which shares, other instruments of ownership, debt instruments, assets, rights and liabilities are transferred in resolution proceedings should provide each other with all the necessary information and support;

6. deciding to rescind or modify the terms of a contract to which the resolution entity is a party or to replace the resolution entity as a party to a contract with the recipient to which shares, other instruments of ownership, debt instruments, assets, rights and liabilities are transferred in resolution proceedings;

7. providing the conditions and entering into appropriate arrangements that ensure the continuity of operations as necessary to ensure the efficiency of the resolution actions and the transfer of the management of a business line to the recipient;

8. requiring the bank or its parent bank to issue appropriate Common Equity Tier 1 instruments or other capital instruments, including preference shares and contingent convertible instruments.

(2) In the exercise of the powers referred to in point 1 of the previous paragraph, the right to compensation provided to the resolution entity or shareholders and creditors under this Act shall not be deemed a liability or encumbrance.

(3) At the request of Banka Slovenije in connection with the exercise of the powers referred to in point 3 of the first paragraph of this article, a regulated market operator shall temporarily suspend trading in a financial instrument on the regulated market or withdraw a financial instrument from trading on a regulated market or from official listing.

(4) In accordance with the provisions of point 7 of the first paragraph of this article, Banka Slovenije shall in particular ensure the following:

1. the continuity of the contracts concluded by the resolution entity, so that the recipient assumes the rights and obligations of the resolution entity in relation to shares, other equity instruments, debt instruments, assets, rights and liabilities that are being transferred, and, explicitly or implicitly, replaces the resolution entity in all appropriate contract documents;

2. the continuity of legal proceedings to which the resolution entity is a party in relation to any financial instrument, right, asset or liability that is being transferred to the recipient, so that the recipient assumes the position of the resolution entity in these procedures.

(5) The exercise of the powers referred to in point 4 of the first paragraph of this article and point 2 of the previous paragraph shall have no effect on the following:

1. the right of the resolution entity’s employees to terminate a contract of employment;

2. except in the cases referred to in Articles 149, 150 and 151 of this Act, the right of a contracting party to exercise any right under the contract, including the right to terminate the contract when the contracting party is entitled to do so under the terms and conditions of the contract due to the commission or omission of an act by the resolution entity before transfer to the recipient or by the recipient after the completed transfer.

Article 147

(Modification of terms of debt instruments and liabilities)

(1) In the implementation of resolution tools in connection with debt instruments and bail-inable liabilities issued by the resolution entity, Banka Slovenije may decide to modify the terms of these instruments and liabilities, including the maturity of the principal, the interest rate and the due date of interest.

(2) Banka Slovenije may also decide to temporarily withhold payment of the resolution entity’s liabilities for debt instruments and other liabilities referred to in the previous paragraph.

(3) The debt instruments referred to in the first and second paragraphs of this article are bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments granting rights to acquire debt instruments.

Article 148

(Request for provision of services and premises)

(1) Banka Slovenije may require a resolution entity or other entity to provide appropriate operational services or premises to enable the recipient to which shares, other instruments of ownership, debt instruments, assets, rights and liabilities are transferred in resolution proceedings to effectively carry out the business activities that have been transferred thereto.

(2) Banka Slovenije shall also exercise the powers referred to in the previous paragraph in connection with a request by the resolution authority of another Member State relating to the provision of services and premises by entities established in the Republic of Slovenia.

(3) In the exercise of its powers referred to in the first and second paragraphs of this article, Banka Slovenije may require the resolution entity or other group entity to provide operational services and premises that do not include any form of financial support.

(4) The resolution entity or a group entity to which Banka Slovenije addresses the request referred to in the first or second paragraphs of this article shall provide the required services or premises under the following conditions:

1. if the services and premises were provided to the resolution entity in accordance with an agreement directly before the implementation of the resolution action: under the same terms for the duration of such agreement;

2. if no agreement was in place before the implementation of the resolution action or the agreement had already expired: under reasonable terms.

Article 149

(Suspension of obligations)

(1) Banka Slovenije may decide to suspend any of the resolution entity’s payment or delivery obligations under any contract to which the resolution entity is a party from the moment of the publication of this suspension decision in accordance with Article 249 of this Act until midnight of the business day following the day of publication of the suspension decision.

(2) If the resolution entity’s payment or delivery obligation under a contract becomes due during the suspension period, this obligation shall be met immediately upon the expiry of this period.

(3) If the resolution entity’s payment or delivery obligations are suspended on the basis of the decision referred to in the first paragraph of this article, the counterparties’ payment or delivery obligations under this contract shall be suspended for the same time period.

(4) The suspension of obligations referred to in the first paragraph of this article shall not apply to payment or delivery obligations of:

1. systems or operators of payment or settlement systems subject to the final settlement of orders in the event of insolvency or other membership termination procedures, as defined by the law governing payment services and systems or the law governing the financial instruments market;

2. central counterparties that have obtained an authorisation pursuant to Article 14 of Regulation 648/2012/EU, and third-country central counterparties recognised in Member States pursuant to Article 25 of Regulation 648/2012/EU;

3. central banks.

(5) Banka Slovenije shall set out the scope of the obligations regarding which suspension may be exercised in accordance with this article, having regard for the circumstances of each case, and in so doing shall in particular assess:

1. the appropriateness of extending the suspension to eligible deposits, especially to guaranteed deposits held by natural persons and micro, small and medium-sized enterprises;

2. the impact that the decision to suspend obligations might have on the orderly functioning of financial markets.

(6) Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, Banka Slovenije shall ensure that the bank grants depositors access to an appropriate daily amount from those deposits.

Article 150

(Restriction of exercise of creditors’ rights)

(1) Banka Slovenije may temporarily restrict creditors’ right to repayment of their claims from the assets of a bank under resolution, irrespective of whether:

1. this right has been established in relation to specific assets or rights or in relation to a specific type of asset or rights or all assets or rights of the resolution entity or by a similar arrangement;

2. this right has been established by a contract or statute;

3. this right is subject to the law of the Republic of Slovenia, other Member States or a third country.

(2) The restriction of the rights of creditors referred to in the previous paragraph may be enforced in relation to any assets of the resolution entity from the adoption of the decision to restrict such rights pursuant to Article 249 of this Act until midnight of the business day following the day of publication of this decision.

(3) The restriction on the rights of creditors referred to in the first paragraph of this article shall not apply to rights relating to a guarantee established by the resolution entity in favour of:

1. systems or operators of payment or settlement systems subject to the final settlement of orders in the event of insolvency or other membership termination procedures, as defined by the law governing payment services and systems or the law governing the financial instruments market;

2. central counterparties that have obtained an authorisation pursuant to Article 14 of Regulation 648/2012/EU, and third-country central counterparties recognised in Member States pursuant to Article 25 of Regulation 648/2012/EU;

3. central banks.

(4) If the circumstances referred to in Article 155 of this Act arise in resolution proceedings, Banka Slovenije shall exercise the power referred to in the first paragraph of this article to ensure that all restrictions on the exercise of rights under a guarantee apply equally to all group entities in respect of which a resolution action has been adopted.

(5) In the exercise of its power under this article, Banka Slovenije shall take into account any effects it may have on the proper functioning of the financial markets.

Article 151

(Suspension of termination rights)

(1) Banka Slovenije may decide to suspend the right of any party to terminate a contract to which the resolution entity is a party from the moment of the publication of the suspension decision in accordance with Article 249 of this Act until midnight of the business day following the day of publication of the suspension decision.

(2) Banka Slovenije may exercise the power referred to in the previous paragraph with regard to the right of any party to terminate a contract with a subsidiary of the resolution entity when:

1. the resolution entity guarantees the obligations under this contract or otherwise guarantees the performance thereof;

2. the right to terminate a contract as specified in the contract is exercised solely by taking into account the resolution entity’s insolvency or financial situation; and

3. the authorisation for transfer that is or may be exercised in relation to the resolution entity in the framework of the resolution actions under this Act shall be subject to the fact that:

* all the assets and liabilities of the subsidiary relating to the aforementioned contract have been or may have been transferred to and assumed by the recipient, or
* Banka Slovenije has otherwise provided appropriate protection for these obligations.

(3) The suspension of the rights referred to in the previous paragraph shall become effective from the moment of the publication of this suspension decision in accordance with Article 249 of this Act until midnight of the business day following the day of publication of the suspension decision.

(4) The suspension of the rights referred to in the first and second paragraphs of this article shall not apply to the right of termination established in favour of:

1. systems or operators of payment or settlement systems subject to the final settlement of orders in the event of insolvency or other membership termination procedures, as defined by the law governing payment services and systems or the law governing the financial instruments market;

2. central counterparties that have obtained an authorisation pursuant to Article 14 of Regulation 648/2012/EU, and third-country central counterparties recognised in Member States pursuant to Article 25 of Regulation 648/2012/EU;

3. central banks.

(5) The counterparty to the contract may exercise its right of termination under the contract before the expiry of the suspension period referred to in the first paragraph of this article following Banka Slovenije’s notice that the rights and obligations covered by the contract will not be transferred in the resolution process to another entity or written down or converted for the recapitalisation of the resolution entity.

(6) When Banka Slovenije decides on the suspension of the right to terminate the contract in accordance with the first or second paragraphs of this article, and when the counterparty does not receive the notice referred to in the previous paragraph, this right may be exercised upon the expiry of the suspension period, having regard for Article 137 of this Act, under the following conditions:

1. if the rights and obligations covered by the contract have been transferred to a recipient, the counterparty may exercise its termination right solely on the basis of the circumstances arising after the transfer and justifying the counterparty’s withdrawal in accordance with the contract;

2. if the rights and obligations covered by the contract have not been transferred to a new recipient and Banka Slovenije has not applied the bail-in tool for the recapitalisation of the resolution entity, the counterparty may exercise its termination right upon the expiry of the suspension period without delay in accordance with the provisions of the contract.

(7) In the exercise of its powers under this article, Banka Slovenije shall take into account any effects it may have on the proper functioning of the financial markets.

(8) In the exercise of the powers pursuant to this Act or the powers relating to prudential supervision pursuant to the law governing banking, Banka Slovenije shall require the resolution entity to maintain detailed records of the contracts and to provide Banka Slovenije with the information necessary to comply with its responsibilities and perform its tasks in accordance with Article 81 of Regulation 648/2012/EU.

Article 152

(Contractual recognition of resolution stay powers)

(1) In any financial contract that they enter into and that is governed by third-country law, resolution entities shall include terms by which the contracting parties recognise that the financial contract may be subject to the exercise of powers by Banka Slovenije to suspend or restrict rights and obligations under Articles 86 to 90 and Articles 149 to 151 of this Act, and recognise that they are bound by the requirements of Article 137 of this Act.

(2) This article shall apply to all financial contracts that:

1. create a new obligation, or materially amend an existing obligation;

2. provide for the exercise of one or more termination rights or rights to enforce security interests to which Articles 86 to 90, Article 137 and Articles 149 to 151 of this Act would apply if the financial contract were governed by the law of the Republic of Slovenia.

(3) EU parent undertakings shall ensure that their third-country subsidiaries include, in any financial contracts that they enter into and that are governed by third-country law, terms to exclude that the exercise of Banka Slovenije’s powers to suspend or restrict rights and obligations of the EU parent undertaking in accordance with the first paragraph of this article constitutes a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts.

(4) The previous paragraph shall be applied in connection with third-country subsidiaries that under the regulations applicable in the Republic of Slovenia are deemed credit institutions, investment firms or financial institutions.

(5) Where an institution or entity does not include the contractual term required in accordance with the first paragraph of this article, that shall not prevent the exercise of the powers referred to in Articles 86 to 90, Article 137 and Articles 149 to 151 of this Act.

2.5.4 Safeguards in connection with the application of resolution actions

Article 153

(Independent assessment of treatment of creditors and shareholders)

(1) Banka Slovenije shall, within six months of the issuance of the decision to apply resolution tools, obtain an independent expert assessment as to whether the shareholders and creditors of the resolution entity were treated worse than they would have been if normal insolvency proceedings had been initiated against the resolution entity. This assessment shall be made separately from the preliminary valuation to be carried out in accordance with Article 80 of this Act.

(2) An independent assessment of the treatment of creditors and shareholders shall be made by an independent appraiser designated by Banka Slovenije.

(3) Notwithstanding the previous paragraph, an independent assessment may be made by an independent appraiser designated to make an independent preliminary valuation in accordance with the fourth paragraph of Article 84 of this Act; however, in such case, an independent assessment of the treatment of shareholders and creditors shall be substantively separated from a valuation for the purposes of the application of resolution actions.

(4) The assessment referred to in the first paragraph of this article shall include information on:

1. the most probable treatment of shareholders and creditors or of the deposit guarantee scheme if normal insolvency proceedings had been initiated against the resolution entity that was subject to resolution proceedings upon the adoption of the decision on entry into resolution in accordance with Article 91 of this Act;

2. the actual treatment of shareholders and creditors or of the deposit guarantee scheme in the resolution of the resolution entity; and

3. any differences between the treatment referred to in points 1 and 2 of this paragraph.

(5) In the assessment referred to in the first paragraph of this article, it shall be assumed that normal insolvency proceedings were initiated against the resolution entity to which resolution actions had been applied upon the adoption of the decision on entry into resolution in accordance with Article 91 of this Act and that resolution actions would not have been implemented.

(6) In the assessment referred to in the first paragraph of this article, any extraordinary public financial support granted to the resolution entity shall not be taken into account.

(7) If, on the basis of the assessment referred to in the first paragraph of this article, it is established that, in accordance with Article 95 of this Act, a shareholder’s or a creditor’s losses would be greater than in the event of the winding-up of the resolution entity under normal insolvency proceedings, the shareholder or creditor shall be entitled to receive payment for the difference from the resolution financing arrangements referred to in Article 157 of this Act.

Article 154

**(Treatment of counterparties in partial transfer)**

(1) In the application of resolution tools that include the transfer of a part of the assets, rights or liabilities of a resolution entity, bridge bank or asset management vehicle to another entity, or when exercising the powers referred to in point 6 of the first paragraph of Article 146 of this Act, Banka Slovenije shall take into account the safeguards referred to in the fourth to eighth paragraphs of this article and Article 155 of this Act in connection with the following agreements and obligations:

1. security arrangements that grant counterparties an actual or contingent right under a guarantee or security to receive payment for their claims from the assets or rights that are being transferred, irrespective of whether this right has been established in relation to specific assets or rights or in relation to a specific type of asset or right or all assets or rights of the resolution entity or by a similar arrangement;

2. title transfer financial collateral arrangements in which title to a financial instrument, cash or a bank loan passes from the financial collateral provider to the collateral taker for the duration of the arrangement in order to secure or cover the settlement of the resolution entity’s specific obligations, provided that the collateral taker retransfers the assets transferred to them in the event of the performance of such obligations;

3. set-off arrangements under which two or more claims or obligations owed between the resolution entity and a counterparty can be set off against each other;

4. netting arrangements;

5. liabilities from covered bonds;

6. structured finance arrangements, including securitisations and instruments used for hedging purposes that form an integral part of the cover pool and which, under applicable laws and regulations, are secured in a manner similar to covered bonds, which involve the granting and exercise of the rights arising from collateral by a party to the arrangement or a trustee, agent or nominee.

(2) In the arrangements referred to in the previous paragraph, Banka Slovenije shall also take into account the restrictions referred to in Article 137 and Articles 149 to 151 of this Act.

(3) The safeguards referred to in this article shall be applied to the arrangements and obligations referred to in the first paragraph of this article irrespective of the number of parties to the arrangement, and irrespective of whether the arrangement is:

1. agreed in a contract, within a trusteeship or similar, by expression of will of the parties or directly under the law or

2. agreed under the laws of another Member State or of a third country, or partly or fully governed by such laws.

(4) In the application of the resolution tools and powers referred to in the first paragraph of this article, Banka Slovenije shall ensure that the security arrangements referred to in point 1 of the first paragraph of this article prevent the following:

1. the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;

2. the transfer of a secured liability unless the benefit of the security is also transferred;

3. the transfer of the benefit of the security unless the secured liability is also transferred; or

4. the modification or termination of the security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(5) In the application of the resolution tools and powers referred to in the first paragraph of this article, Banka Slovenije shall ensure that the arrangements referred to in points 2, 3 and 4 of the first paragraph of this article prevent the following:

1. the transfer of a part of the rights and obligations included in each arrangement from the resolution entity to another entity;

2. the modification or termination of the rights and obligations included in each arrangement;

(6) For the purposes of the previous paragraph, the rights and obligations shall be deemed to have been included in an arrangement if the parties to the arrangement are entitled to set off or net those rights and liabilities.

(7) In the application of the measures and powers referred to in the first paragraph of this article, Banka Slovenije shall ensure that the arrangements referred to in points 5 and 6 of the first paragraph of this article prevent the following:

1. the transfer of a part of assets, rights and liabilities that constitute a structured finance arrangement or a part thereof;

2. the modification or termination of assets, rights and liabilities that constitute a structured finance arrangement or a part thereof.

(8) Notwithstanding the fourth, fifth and seventh paragraphs of this article, Banka Slovenije shall, if necessary, undertake the following to ensure the availability of guaranteed deposits:

1. transfer the guaranteed deposits that are a part of any arrangement referred to in the first paragraph of this article without simultaneously transferring other assets, rights or liabilities that form a constituent part of such arrangement, and

2. transfer, modify of cancel the assets, rights or liabilities that are a part of any arrangement referred to in the first paragraph of this article without simultaneously transferring other assets, rights and liabilities that form a constituent part of such arrangement.

Article 155

(Protection of trading, clearing and settlement systems)

The application of resolution tools and resolution powers that include the transfer of a part of the assets, rights or liabilities of a resolution entity, bridge bank or asset management vehicle to another entity, or the exercise of the powers referred to in point 6 of the first paragraph of Article 146 of this Act shall not affect the rights and obligations of the resolution entity towards payment and settlement systems in which the final settlement of orders in the event of insolvency or other membership termination proceedings is guaranteed in accordance with regulations, as determined by the law governing payment services and systems or by the law governing the financial instruments market, particularly not in the following manner:

1. by causing the cancellation of, changes to or revocation of a transfer order and the set-off of claims and liabilities in the system;

2. by restricting or preventing the use of assets or securities held in the settlement account of a system member, including the exercise of any drawing rights from credit lines within the scope of the security in the form of collateral;

3. by restricting or preventing the exercise of rights arising from collateral established for the benefit of the operator of the system or its members or for the benefit of the central banks of Member States or the European Central Bank.

2.6 Financing of resolution actions

Article 156

(Use of assets from deposit guarantee scheme in resolution)

(1) If depositors’ access to guaranteed deposits is maintained during resolution actions, the deposit guarantee scheme, taking into account the valuation in accordance with Article 80 of this Act, shall contribute to resolution in the following cases:

1. when using the write-down and conversion tool: the amount written down to offset the bank’s losses in accordance with point 1 of the first paragraph of Article 108 of this Act if, by using this tool, the guaranteed deposits were written down in the same proportion as liabilities of the same priority class; or

2. when using one or more resolution tools: the amount of losses sustained by the deposit guarantee scheme in the event of the winding-up of the bank in normal insolvency proceedings.

(2) When the bail-in tool is applied, the deposit guarantee scheme shall not be required to contribute to the recapitalisation of the bank or the bridge bank in accordance with point 2 of the first paragraph of Article 108 of this Act.

(3) The contribution of the deposit guarantee scheme to the financing of resolution shall in no case exceed one of the following two amounts:

1. the amount of losses sustained by the deposit guarantee scheme in the event of the winding-up of the bank in normal insolvency proceedings, or

2. an amount that equals 50% of the target level of the deposit guarantee fund determined in accordance with the law governing the deposit guarantee scheme.

(4) If the independent assessment referred to in Article 153 of this Act shows that the contribution of the deposit guarantee scheme to resolution proceedings was greater than the net losses that might have been sustained by it had the bank been wound up in normal insolvency proceedings, the deposit guarantee scheme shall be entitled to receive the difference from the resolution financing arrangement to the benefit of the deposit guarantee scheme.

(5) The deposit guarantee scheme shall provide payment of the contribution referred to in the first paragraph of this article on the basis of a decision by Banka Slovenije. The contribution from the deposit guarantee scheme shall be provided in cash.

(6) If a part of an eligible deposit at a bank under resolution is transferred to another entity via the application of the sale of business tool or the bridge bank tool, the depositors may not make any claims towards the deposit guarantee scheme for that part of the eligible deposit at the bank under resolution that has not been transferred if the transferred part of eligible deposits and of the corresponding assets provided to the recipient in connection with these liabilities is equal to or greater than the amount of the guaranteed deposit in the deposit guarantee scheme.

Article 157

(Resolution financing arrangement)

(1) If the application of resolution actions, including the assets contributed by the deposit guarantee system in accordance with the previous article, fails to provide the financial resources necessary to effectively implement the aforementioned actions and achieve resolution goals, additional financial assets shall be provided within a resolution financing arrangement established pursuant to Regulation 806/2014/EU and this Act.

(2) The resolution financing arrangement shall include the funds of the Single Resolution Fund established in accordance with Regulation 806/2014/EU by the Single Resolution Board and the funds provided to Banka Slovenije by branches of third-country banks in accordance with this Act.

(3) For the purpose of establishing and operating the resolution financing arrangement, Banka Slovenije shall:

1. collect *ex-ante* contributions and extraordinary *ex-post* contributions from banks for the resolution financing arrangement, the level of which is determined by the Single Resolution Board in accordance with Regulation 806/2014/EU and Commission Delegated Regulation (EU) No 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex-ante* contributions to resolution financing arrangements (OJ L 11, 17.1.2015, p. 44), last amended by a Corrigendum (OJ L 156, 20.6.2017, p. 38) (hereinafter: Delegated Regulation 2015/63/EU);

2. ensure the transfer of *ex-ante* and extraordinary *ex-post* contributions to the Single Resolution Fund and exercise other powers and tasks relating to the management of funds by the Single Resolution Board defined by the Transfer Agreement;

3. determine and collect *ex-ante* and extraordinary *ex-post* contributions and manage the funds paid for the resolution financing arrangement by EU branches established in the Republic of Slovenia in accordance with this Act;

4. make proposals to the Single Resolution Board regarding use of the funds of the Single Resolution Fund for financing resolution actions adopted by Banka Slovenije in accordance with Regulation 806/2014/EU.

Article 158

(Sources of funds for resolution financing arrangement in framework of Single Resolution Fund)

(1) All banks, including a bridge bank, if any, shall provide *ex-ante* and extraordinary *ex-post* contributions for resolution financing in the framework of the Single Resolution Fund in the amount and in the manner determined by the Single Resolution Board in accordance with Regulation 806/2014/EU and Delegated Regulation 2015/63/EU.

(2) EU branches established in the Republic of Slovenia shall provide *ex-ante* and extraordinary *ex-post* contributions for resolution financing in the amount and in the manner determined by Banka Slovenije.

(3) Third-country banks and their branches shall make the contributions referred to in the first and second paragraphs of this article in accordance with a decision of Banka Slovenije.

(4) The Republic of Slovenia may approve a loan in the amount determined by the Single Resolution Board as the last possible resort in order to ensure financing of the Single Resolution Fund.

(5) The amount of the loan referred to in the previous paragraph may not exceed EUR 71,500,000.

(6) The loan agreement referred to in the fourth paragraph of this article shall be signed by the Single Resolution Board and the minister responsible for finance.

Article 159

(*Ex-ante* contributions in connection with operations of EU branches)

(1) A third-country credit institution shall pay an *ex-ante* contribution to the resolution scheme when it obtains an authorisation to establish an EU branch in the Republic of Slovenia in accordance with the law governing banking.

(2) Banka Slovenije shall determine the amount of the resolution contribution to be paid by a third-country credit institution for the operation of an EU branch in the Republic of Slovenia within the scope of the authorisation referred to in the previous paragraph. The rules for calculating *ex-ante* contributions by banks set out in Regulation 806/2014/EU and Delegated Regulation 2015/63/EU shall apply *mutatis mutandis* to the calculation of *ex-ante* and extraordinary *ex-post* contributions for an EU branch.

(3) In determining the amount of an *ex-ante* contribution for an EU branch, Banka Slovenije shall take into account the following:

1. the risk profile of the third-country credit institution determined by the competent authority of the third country and the attributes of the activities, assets, rights and liabilities of the third-country credit institution pursued or exercised through its branch in the Republic of Slovenia;

2. any cooperation agreement between resolution authorities entered into with the third country that is binding on the Republic of Slovenia;

3. approval or refusal to approve resolution actions adopted by the resolution authority in the third country in accordance with Article 273 of this Act.

(4) Via an implementing regulation, Banka Slovenije may lay down more detailed rules for calculating a third-country credit institution’s *ex-ante* and extraordinary *ex-post* contributions in connection with the operation of an EU branch in the Republic of Slovenia.

(5) At the proposal of the third-country credit institution, Banka Slovenije may decide that the third-country credit institution’s contributions be provided through multiple partial payments made at least once a year. The third-country credit institution shall pay the contributions in full within three years.

Article 160

(Decision on payment of contributions)

(1) Banka Slovenije shall issue a decision imposing the obligation to pay contributions referred to in Articles 158 and 159 of this Act, in which it shall define the type and amount of the contributions, the deadline for payment and the account into which the contribution is to be paid.

(2) The deadline for the payment of an *ex-ante* contribution shall be 15 days after the service of the decision.

Article 161

(Payment of contribution and implementation of decision)

(1) If a third-country bank or credit institution fails to pay the contribution referred to in Articles 158 or 159 of this Act for the operation of its branch in the Republic of Slovenia in accordance with the relevant decision by the specified deadline, Banka Slovenije shall *ex* *officio* propose that the decision be enforced by an authority responsible for tax collection in accordance with the tax enforcement procedure pursuant to the law governing tax procedure, unless otherwise provided in this article.

(2) On the basis of Banka Slovenije’s proposal, the authority responsible for tax collection shall issue an order for the enforcement of the decision within 30 days.

(3) When an objection is lodged against the enforcement order of the authority responsible for tax collection, the provisions of the law governing tax procedure on the deferral of tax enforcement shall not apply.

Article 162

(Transfer to Single Resolution Fund and asset management by Banka Slovenije)

(1) Banka Slovenije shall open and manage a separate cash account for the payment of contributions by banks into the Single Resolution Fund and a separate cash account for the payment of contributions by an EU branch in accordance with Articles 158 and 159 of this Act.

(2) Banka Slovenije shall transfer the funds paid by banks into the Single Resolution Fund in accordance with the Transfer Agreement.

(3) The funds paid by third-country banks for the operation of their EU branches in the Republic of Slovenia (hereinafter: allocated funds for resolution) shall be the property of Banka Slovenije and may only be used for financing resolution actions.

(4) Banka Slovenije shall manage the allocated funds in order to ensure:

1. permanent and immediate availability of the funds for the financing of resolution actions within the resolution financing arrangements, and

2. security, low risk and high liquidity.

(5) Banka Slovenije shall sub-contract the management of the allocated funds on its own behalf and for the account of the allocated funds. Liabilities and costs in connection with management shall be paid by debiting the allocated resolution funds.

Article 163

(Use of funds from resolution financing arrangement)

(1) The funds derived from contributions by banks and their EU branches to the resolution financing arrangements may be used solely for the purpose of financing resolution actions under the conditions set out by Regulation 806/2014/EU and this Act.

(2) Banka Slovenije may propose that the Single Resolution Board use additional funds from the Single Resolution Fund in accordance with Regulation 806/2014/EU and the Transfer Agreement to the extent necessary for efficient application of resolution actions in accordance with this Act, having regard for the funds used for resolution purposes pursuant to the third paragraph of this article.

(3) In connection with the proposal referred to in the previous paragraph, Banka Slovenije shall also take account of the following:

1. available funds paid into the resolution financing arrangements by branches of third-country banks; and

2. funds contributed by the deposit guarantee scheme to the financing of resolution actions in accordance with Article 156 of this Act.

(4) Banka Slovenije shall decide on the use of funds paid by branches of third-country banks after the Single Resolution Board decides to use the funds of the Single Resolution Fund to finance bank resolution actions in accordance with Regulation 806/2014/EU within the scope of its powers or in accordance with the proposal referred to in the second paragraph of this article.

2.7 *Cross-border resolution*

Article 164

(Resolution college)

(1) The group-level resolution authority shall establish a resolution college whose tasks shall include those referred to in Articles 33, 35, 42 to 47, 49 to 62, 75 to 77 and 99 of this Act. When necessary, a resolution college may also be established in order to provide a framework for cooperation and coordination with third-country resolution authorities.

(2) The resolution college shall provide the group-level resolution authority, other competent resolution authorities involved and other competent authorities, including the European Banking Authority, with a framework to exercise their powers and tasks referred to in the previous paragraph in the following ways:

1. exchanging information relevant to the development of group resolution plans, to the application of preparatory and preventative powers to groups, and to group resolution;

2. assessing resolvability in accordance with Article 33 of this Act;

3. exercising the power to address or remove impediments to group resolvability in accordance with Article 35 of this Act;

4. drawing up group resolution plans in accordance with Articles 42 to 47 of this Act;

5. deciding on the need to establish a group resolution scheme having regard for Articles 75 to 77 of this Act;

6. reaching the agreement on a group resolution scheme having regard for Articles 75 to 77 of this Act;

7. coordinating public communication of group resolution strategies and schemes;

8. coordinating the use of resolution financing arrangements;

9. setting the minimum requirement for own funds and eligible liabilities for groups at the consolidated and subsidiary levels in accordance with this Act;

10. discussing any issues relating to cross-border group resolution.

(3) Members of the resolution college shall include:

1. the group-level resolution authority;

2. the resolution authorities of the Member States where subsidiaries covered by consolidated supervision are established;

3. the resolution authorities of the Member States where a parent undertaking of one or more group institutions that is a parent financial holding company in a Member State, an EU parent financial holding company, a parent mixed financial holding company in a Member State or an EU parent mixed financial holding company is established;

4. the resolution authorities of Member States in which significant branches are established;

5. the consolidating supervisor and the competent authorities of the Member States if the resolution authority is a member of the resolution college, which may be accompanied by a representative of the Member State’s central bank when the central bank does not perform the tasks of the Member State’s competent authority;

6. the competent ministries of the Member States, where the resolution authorities that are members of the resolution college are not the competent ministries;

7. the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college;

8. the European Banking Authority under the conditions referred to in the fourth paragraph of this article.

(4) The European Banking Authority shall be invited to the meetings of the resolution college in order to promote and monitor the efficient, effective and consistent operation of the resolution college in accordance with international standards, but shall have no voting rights in decision-making within the resolution college.

(5) An invitation to participate in the work of the resolution college as an observer may also be extended to third-country resolution authorities when a parent undertaking or institution established in a Member State has a subsidiary institution or a branch that might be considered significant if it were situated in a Member State, if the third-country resolution authority makes a request to participate in the work of the resolution college and if this authority is subject to confidentiality requirements that the group-level resolution authority considers to be equivalent to the requirements referred to in Articles 18 to 20 of this Act.

(6) Notwithstanding the first paragraph of this article, a group-level resolution authority shall not be obliged to establish a resolution college if other groups or resolution colleges perform the same functions and tasks and comply with all conditions and procedures relating to the functioning of the resolution college under this Act, including the rules on membership and participation in resolution colleges. In this case any reference to resolution colleges in this Act shall also be considered a reference to the other relevant resolution groups or colleges.

(7) The group-level resolution authority shall chair the resolution college, and in this capacity it shall:

1. establish written arrangements and procedures for the functioning of the resolution college after consulting the other members of the resolution college;

2. coordinate all activities of the resolution college;

3. convene and chair the meetings of the resolution college and provide comprehensive information on the organisation of the resolution college’s meetings, the topics and the main issues to be discussed;

4. notify the members of the resolution college of any planned meetings so that they can request to participate;

5. decide which members and observers shall be invited to attend particular meetings of the resolution college, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on the financial stability in the Member States concerned;

6. inform all resolution college members of the decisions and outcomes of the meetings in timely fashion.

(8) Notwithstanding point 5 of the first paragraph of this article, resolution authorities may request to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

Article 165

(European resolution college)

(1) When a third-country institution or a third-country parent undertaking of a Member State credit institution has parent undertakings or subsidiaries established in two or more Member States or two or more branches in various Member States that are considered to be significant by the competent authorities of these Member States, the resolution authorities of the Member States in which the aforementioned subsidiaries are established or in which the significant branches operate shall establish a European resolution college.

(2) The European resolution college shall perform the functions and tasks referred to in the previous article in relation to entities referred to in the previous paragraph and their subsidiaries, including the determination of the minimum requirement for own funds and eligible liabilities, whereby the members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

(3) Where, in accordance with the global resolution strategy, subsidiaries established in Member States or an EU parent undertaking and its subsidiary institutions are not defined as resolution entities, and the members of the European resolution college agree with that strategy, subsidiaries established in Member States or, on a consolidated basis, the EU parent undertaking shall comply with the requirement referred to in Article 58 of this Act by issuing instruments referred to in the fifth or sixth paragraphs of Article 58 of this Act to their ultimate parent undertaking established in a third country, to subsidiaries of that ultimate parent undertaking established in the same third country or to other entities under the conditions set out in point 1 of the fifth paragraph and point 2 of the sixth paragraph of Article 58 of this Act.

(4) Where only one EU parent undertaking holds all subsidiaries established in Member States of a third-country institution or third-country parent undertaking, the European resolution college shall be chaired by the resolution authority of the Member State where the EU parent undertaking is established.

(5) Where the previous paragraph does not apply, the European resolution college shall be chaired by the resolution authority of the EU parent undertaking or the subsidiary in a Member State with the highest value of total on-balance sheet assets.

(6) Notwithstanding the first paragraph of this article, resolution authorities shall not be obliged to establish a European resolution college if other groups or resolution colleges perform the same functions and tasks and comply with all conditions and procedures relating to the functioning of the European resolution college under this Act, including the rules on membership and participation in resolution colleges. In this case any reference to the European resolution college in this Act shall be understood as a reference to other appropriate resolution groups or colleges.

(7) The provisions of the previous article shall apply to the functioning of the European resolution college referred to in the fourth to sixth paragraphs of this article.

Article 166

(Resolution of parent undertaking of third-country credit institution)

(1) Banka Slovenije may take resolution actions for a parent undertaking established in the Republic of Slovenia if a third-country resolution authority establishes that a third-country subsidiary credit institution meets the resolution conditions under the law of the third country and if Banka Slovenije’s actions are necessary to protect the public interest.

(2) Banka Slovenije may use all its resolution powers and competences to implement resolution actions provided by this Act.

Article 167

(Resolution of EU branches)

(1) Under the conditions referred to in the second paragraph of this article, Banka Slovenije shall apply resolution actions in relation to an EU branch established in the Republic of Slovenia when the EU branch:

1. is not included in the resolution of a credit institution in a third country; or

2. is included in the resolution of a credit institution in a third country when there are grounds for rejecting the recognition and implementation of the resolution actions adopted by the third-country resolution authority in accordance with the fourth paragraph of Article 273 of this Act.

(2) Banka Slovenije shall apply resolution actions in relation to the EU branch referred to in the previous paragraph when it deems the application of such actions to be necessary to protect the public interest and when one of the following conditions has been met:

1. the EU branch in the Republic of Slovenia no longer meets, or it is unlikely to continue to meet the conditions defined by the law governing banking for obtaining an authorisation to provide banking services via a branch of a third-country credit institution and there is no prospect of these conditions being met again within a reasonable time limit;

2. in Banka Slovenije’s assessment, the third-country credit institution that established the EU branch in the Republic of Slovenia is incapable or is not likely to be capable of meeting its obligations towards creditors in the Republic of Slovenia or in another Member State or obligations that have been created or booked through the branch as they fall due, and Banka Slovenije is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to the third-country institution in a reasonable timeframe;

3. the relevant third-country authority has initiated resolution proceedings in relation to the third-country credit institution, or has notified Banka Slovenije of its intention to initiate such proceedings.

(3) When Banka Slovenije adopts resolution actions for an EU branch in the Republic of Slovenia, it shall have regard for the principles and conditions for applying resolution tools and exercising resolution powers as provided by this Act in order to achieve the resolution objectives referred to in Article 27 of this Act.

CHAPTER 3: COMPULSORY WINDING-UP OF BANKS

3.1 Common provisions on compulsory winding-up proceedings

Article 168

(Compulsory winding-up proceedings for banks)

(1) There are two types of compulsory winding-up proceedings for banks:

1. compulsory liquidation proceedings; and

2. bankruptcy proceedings.

(2) Insolvency proceedings or compulsory winding-up proceedings pursuant to the law governing financial operations, insolvency proceedings and compulsory winding-up may not be initiated against a bank.

(3) Proceedings for the compulsory winding-up of banks shall be deemed to be proceedings for the winding-up of credit institutions as defined by Directive 2001/24/EC.

Article 169

(Application of other regulations)

Unless otherwise provided by this Act, the provisions of the law governing financial operations, insolvency proceedings and compulsory winding-up relating to bankruptcy proceedings against companies shall apply to bankruptcy proceedings against banks.

Article 170

(Participation of other authorities of Republic of Slovenia)

Courts and other national authorities shall give priority to matters in which a bank is a party to compulsory winding-up proceedings or to matters whose outcome affects the course of compulsory winding-up proceedings under this Act.

3.2 Compulsory liquidation

3.2.1 General provisions

Article 171

(Purpose and objectives of compulsory liquidation)

(1) Compulsory liquidation proceedings against a bank are proceedings for winding up a bank as a legal entity and are carried out by Banka Slovenije in order to close the bank’s operations and settle its liabilities to creditors arising from contracts for the provision of banking services, financial services and ancillary financial services performed by the bank on the basis of the authorisation to provide banking services under the law governing banking (hereinafter: contract for the provision of banking services).

(2) Compulsory liquidation includes application of the following tools:

1. sale of business;

2. asset separation.

(3) In addition to the tools referred to in the previous paragraph, compulsory liquidation proceedings may also be carried out through other activities in order to ensure the implementation of compulsory liquidation and repayment of the bank’s creditors.

Article 172

(Objectives and principles of compulsory liquidation proceedings)

(1) A bank’s operations shall be closed in compulsory liquidation proceedings in order to achieve the following objectives:

1. to ensure that depositors continue to have access to their deposits;

2. to ensure that clients continue to have the maximum possible access to basic banking services;

3. to ensure the repayment of creditors’ claims by upholding the order of priority in which creditors are repaid in cases where access to deposits cannot be maintained;

4. to maintain or increase the value of the bank’s assets through the management thereof in order to ensure the maximum possible repayment of its liabilities.

(2) Banka Slovenije shall observe the following rules in compulsory liquidation proceedings:

1. creditors that are in the same situation in relation to the bank shall be given equal treatment;

2. compulsory liquidation proceedings shall be conducted so as to provide the most favourable terms with regard to the amount of payment of creditors’ claims within the shortest possible time;

3. Banka Slovenije, the liquidator and other persons and bodies that perform actions in compulsory liquidation proceedings against a bank pursuant to the law or special authorisation shall exercise their powers to ensure that such actions are performed within the shortest possible time.

3.2.2 Initiation of compulsory liquidation proceedings

Article 173

(Initiation of compulsory liquidation proceedings)

(1) Compulsory liquidation proceedings shall be initiated on the basis of a Banka Slovenije decision to initiate compulsory liquidation proceedings.

(2) Banka Slovenije shall decide to initiate compulsory liquidation proceedings *ex officio* in the following cases:

1. if the European Central Bank has withdrawn the bank’s authorisation to provide banking services in accordance with Regulation 1024/2013/EU and the law governing banking; or

2. if the bank’s authorisation to provide banking services has expired in accordance with the law governing banking.

(3) Notwithstanding the previous paragraph, Banka Slovenije shall not initiate compulsory liquidation proceedings if the bank meets all its obligations towards its creditors under service contracts before the withdrawal or expiry of its authorisation to provide banking services.

Article 174

(Decision to initiate compulsory liquidation proceedings)

The decision to initiate compulsory liquidation proceedings shall include the following:

1. the conclusion that there are grounds for initiating compulsory liquidation proceedings against the bank pursuant to this Act;

2. the appointment of one or more liquidators in compulsory liquidation proceedings for the bank, and an indication of the identification data on the liquidator referred to in the third paragraph of Article 176 of this Act, and

3. restrictions on the bank’s operations imposed under this Act and determined by Banka Slovenije in accordance with this Act.

Article 175

(Termination of powers of management bodies, general meeting and procurators)

(1) The service of the decision to initiate compulsory liquidation proceedings on the bank shall entail the termination of the powers of the bank’s management board, supervisory board and general meeting, and:

1. the termination of the term of office, powers and competences of all members of the management board and procurators to direct the bank’s business and represent the bank;

2. the termination of the term of office and all powers and competences relating to the powers and tasks of the members of the bank’s supervisory board;

3. the termination of the powers and competences of the shareholders and their other competences relating to the work of the bank’s general meeting.

(2) Upon the service of the decision to initiate compulsory liquidation proceedings against the bank, the members of the bank’s management board and the procurators shall forthwith transfer their duties to the liquidator, grant the liquidator access to all of the bank’s business and other documentation, and draw up a report on the transfer of their duties to the liquidator. The members of the bank’s management board and procurators shall provide the liquidator with all explanations or additional reports and information on the bank’s operations at the liquidator’s request.

(3) The dismissed members of the bank’s management board and procurators shall not be entitled to reimbursements or other compensation provided by the bank’s bylaws or agreed by contracts between the bank and members of its management board and procurators in the event of the early termination or dismissal from the position of a member of the bank’s management board or procurator.

(4) The Governing Board of Banka Slovenije shall decide in compulsory liquidation proceedings on matters that otherwise fall within the competence of the supervisory board and the general meeting of the bank in accordance with other regulations. Notwithstanding the provisions of the law governing companies or the law governing banking that relate to the exercise of the powers of a bank’s supervisory board and general meeting, Banka Slovenije shall adopt the decisions concerning the exercise of such powers within the framework of compulsory liquidation proceedings in the form of resolutions in accordance with the law governing Banka Slovenije.

(5) Banka Slovenije shall not assume the duties and responsibilities of the management board or a member of the supervisory board as defined by the law governing companies or other regulations, and the members of the Governing Board of Banka Slovenije shall not be considered members of the bank’s management board or supervisory board in the exercise of Banka Slovenije’s powers under this Act.

Article 176

(Registration in connection with compulsory liquidation proceedings)

(1) The following entries shall be made in the court register:

1. the initiation of compulsory liquidation proceedings;

2. the completion of compulsory liquidation proceedings.

(2) Simultaneously with the registration of the initiation of the proceedings, the following shall be entered in the court register:

1. the indication "in compulsory liquidation" after the bank’s business name;

2. for persons authorised to represent the bank:

* the termination of the powers of the members of the management board and procurators referred to in the previous article,
* the liquidator or liquidators referred to in Article 177 of this Act as the new representatives of the bank.

(3) Banka Slovenije shall indicate the following data on the liquidator in the application for entry in the court register:

1. the liquidator’s name;

2. the liquidator’s address of permanent residence;

3. the liquidator’s date of birth, if they have neither a personal identification number nor a tax identification number;

4. the liquidator’s personal identification number if they are entered in the central population register, or the liquidator’s tax identification number if they are not entered in the central population register;

5. if the liquidator exercises their powers and tasks in the legal form of a sole trader, registered professional or corporation, the data entered in the business register, as well as the business name, registered office or business address, and registration number of the sole trader, registered professional or corporation.

(4) Banka Slovenije shall notify the register court having territorial jurisdiction to decide on entries in the court register on behalf of the bank of the issuance of a decision to initiate compulsory liquidation proceedings on the next business day following the date of issue of such decision.

(5) Banka Slovenije shall send the notification referred to in the previous paragraph to the email address of the register court and attach to it a copy of its decision, which serves as the basis for the occurrence of the legal fact that is the subject of registration.

3.2.3 Liquidator in compulsory liquidation proceedings

Article 177

(Appointment of liquidator in compulsory liquidation proceedings)

(1) Banka Slovenije shall issue a decision to initiate compulsory liquidation proceedings appointing one or more liquidators, who shall assume the powers and competences to manage and represent the bank upon the initiation of compulsory liquidation proceedings.

(2) In appointing a liquidator in compulsory liquidation proceedings, Banka Slovenije may only appoint a person who:

1. has the professional qualifications, knowledge, skills and personal characteristics necessary to perform the duties of a compulsory liquidator of a bank, and

2. has the relevant experience to conduct liquidation proceedings and manage the assets of a bank or an undertaking of comparable size and sphere of activity to the bank.

(3) The liquidator shall be entitled to remuneration for their work performed in the compulsory liquidation proceedings against a bank.

(4) The remuneration of the liquidator shall be determined by Banka Slovenije having regard for the size of the bank, the complexity of the bank’s activities, the type and volume of its assets and the number of the bank’s creditors and their characteristics. In determining the liquidator’s remuneration, Banka Slovenije shall take into account the scale of the tasks to be performed by the liquidator in the management of the bank’s assets in compulsory liquidation proceedings.

(5) For the implementation of other regulations governing the governance and operations of companies, Banka Slovenije shall, when initiating compulsory liquidation proceedings against a bank, assume the competences and powers of the supervisory board and of the general meeting of the bank and shall give binding written instructions to the liquidator for managing and representing the bank in compulsory liquidation proceedings.

(6) After the initiation of compulsory liquidation proceedings, all papers in court and other proceedings that should be served on the bank as a party to or participant in proceedings shall be served on the liquidator at the address of the bank.

Article 178

(Duties of liquidator)

(1) The liquidator shall exercise their powers and tasks in compulsory liquidation proceedings against the bank in accordance with:

1. this Act, and within the bounds of the powers conferred on them and the instructions provided to them by Banka Slovenije in accordance with this Act,

2. regulations governing the provision of banking services, and

3. professional rules applicable to the execution of transactions for other persons.

(2) The liquidator shall perform their tasks conscientiously, honestly and with due professional diligence, shall safeguard the interests of creditors, and shall take into account the aims and principles of compulsory liquidation proceedings against the bank.

(3) The liquidator shall give equal treatment to creditors who are in the same situation in relation to the bank, and shall not allow or facilitate that:

1. certain creditors achieve benefits at the expense of other creditors who are in the same situation in relation to the bank, or

2. other persons acquire the bank’s assets without providing an equivalent trade-off, or obtain other benefits at the expense of the bank’s assets contrary to the laws, regulations and professional rules referred to in the first paragraph of this article.

(4) The liquidator shall be liable for the supervision of the financial situation under the law governing integrity and prevention of corruption. The provisions of the law governing integrity and prevention of corruption shall apply to the procedures for persons obliged to report their financial situation, changes in their financial situation and the implementation of supervision of the financial situation of obliged persons under the previous paragraph. The deadline periods relating to the supervision of the financial situation under the law governing integrity and prevention of corruption shall run in relation to the duty of each liquidator from the day when they assume their function.

Article 179

(Powers of liquidator)

(1) The liquidator shall take all necessary measures to achieve the objectives of compulsory liquidation.

(2) For the purposes referred to in the previous paragraph, the liquidator shall:

1. implement measures to liquidate the assets by using compulsory liquidation tools;

2. implement measures to repay the bank’s creditors;

3. perform other acts in compulsory liquidation proceedings referred to in points 1 and 2 of this paragraph.

(3) When Banka Slovenije appoints more than one liquidator in compulsory liquidation proceedings, the liquidators shall jointly represent the bank and direct its business as the management board of the bank in compulsory liquidation proceedings. In its decision on appointment, Banka Slovenije may define the powers and responsibilities of a particular liquidator in the independent representation and direction of the bank’s business. Banka Slovenije may at any time amend, restrict or revoke the powers of each liquidator, or dismiss each liquidator and appoint a new one.

(4) Banka Slovenije shall give the liquidator binding instructions regarding their work.

Article 180

(Powers of liquidator regarding actions in other Member States)

(1) In compulsory liquidation proceedings, the liquidator may carry out actions regarding the management of the bank’s assets, including in the territory of a Member State in which the bank has a branch or directly provides services, except the implementation of coercive measures or decisions on matters that fall within the competence of the authorities or courts of that Member State in accordance with its regulations.

(2) When carrying out actions in other Member States, the liquidator may in particular:

1. grant specific persons in the Member State the power to perform certain activities in the compulsory liquidation proceedings, including the power of representation in proceedings in the Member State;

2. request the entry of specific facts relating to the compulsory liquidation proceedings in the public registers established in the Member State.

(3) In the exercise of their powers in another Member State, the liquidator shall act in accordance with the laws of that Member State, in particular with the regulations on asset liquidation and notification of employees.

3.2.4 Legal consequences of the initiation of compulsory liquidation proceedings against a bank

Article 181

(Occurrence and duration of legal consequences in general)

(1) The legal consequences of compulsory liquidation proceedings shall arise for a bank upon the service of the decision to initiate compulsory liquidation proceedings.

(2) The legal consequences of compulsory liquidation proceedings shall arise for a bank’s shareholders, creditors and other persons in a relationship with the bank on the date of publication of the decision to initiate compulsory liquidation proceedings in accordance with Article 249 of this Act.

(3) The legal consequences of compulsory liquidation proceedings initiated against a bank shall last until Banka Slovenije issues a decision terminating the compulsory liquidation proceedings or until the issuance of a court decision to initiate bankruptcy proceedings against the bank in accordance with this Act.

(4) The legal consequences of compulsory liquidation proceedings shall arise for a bank’s shareholders, creditors and other persons with regard to their entitlements and claims incurred until the initiation of compulsory liquidation proceedings against the bank, unless otherwise provided for individual cases by this Act.

(5) The legal consequences arising from compulsory liquidation measures, including the measures taken to repay the creditors, transfer assets and liabilities to the recipient, set off claims and liabilities, and reach a settlement with creditors shall arise for the bank, shareholders, creditors and other persons on the date when Banka Slovenije’s decision on each measure, repayment, transfer, set-off and settlement is published in accordance with Article 249 of this Act.

Article 182

(Consequences for enforcement or collateralisation proceedings)

(1) No enforcement or collateralisation decision may be issued in enforcement or collateralisation proceedings conducted by the court or other state authority after the initiation of compulsory liquidation proceedings.

(2) The previous paragraph shall not apply to the collateralisation of the following:

1. creditors’ requests for the application of the right to separate settlement or the exclusion right if the creditor submits a request to the bank to issue a decision on enforcement or collateralisation in enforcement or collateralisation proceedings at least three months before the initiation of compulsory liquidation proceedings against the bank;

2. claims paid as the costs of compulsory liquidation proceedings.

(3) Enforcement or collateralisation proceedings initiated against a bank prior to the initiation of compulsory liquidation proceedings shall be suspended upon the initiation of compulsory liquidation proceedings, and the separation rights obtained in these proceedings shall be taken into account in the compulsory liquidation proceedings. Upon the initiation of compulsory liquidation proceedings, collateralisation proceedings shall be suspended via an interim or preliminary order, and any actions carried out within the proceedings shall be repealed.

(4) Notwithstanding the previous paragraph, the initiation of compulsory liquidation proceedings shall not affect enforcement proceedings initiated against a bank before the initiation of compulsory liquidation proceedings provided that the assets that are subject to enforcement have been sold before the initiation of the compulsory liquidation proceedings.

Article 183

(Withdrawal from bids)

Upon the initiation of compulsory liquidation proceedings, the bank shall be entitled to withdraw from a bid made before the initiation of compulsory liquidation proceedings if the bank has not received the addressee’s statement of acceptance of the bid before the initiation of the compulsory liquidation proceedings.

Article 184

(Withdrawal from lease agreements)

(1) Upon the initiation of compulsory liquidation proceedings, the bank shall be entitled to withdraw from lease agreements concluded before the initiation of the compulsory liquidation proceedings subject to one month’s notice, notwithstanding the general rules on the right to terminate a lease agreement defined by a law or a contract that could have been applied if compulsory liquidation proceedings had not been initiated against the bank as a lessor or lessee.

(2) If a bank exercises its right to terminate a lease agreement referred to in the previous paragraph, the period of notice shall commence on the last day of the month in which the counterparty receives the bank’s statement of termination and expire on the last day of the following month.

(3) The implementation of the termination right in accordance with the first and second paragraphs of this article shall not prejudice the counterparty’s right to demand from the bank compensation for the damage caused by implementation of the termination right contrary to the general conditions referred to in the first paragraph of this article.

Article 185

(Suspension of statute-barring for bank claims)

The statute-barring for a bank’s claims against its debtors shall be suspended for one year following the initiation of compulsory liquidation proceedings.

Article 186

(Interest paid on claims)

(1) The contractual rate of interest shall not be modified following the initiation of compulsory liquidation proceedings. and shall apply until the contractual due date of these liabilities of the bank. Interest on the bank’s liabilities shall start to accrue from the due date for payment at the statutory default interest rate unless the agreed contractual default interest rate is lower than the statutory rate.

(2) If the bank’s contractual obligation occurs before the initiation of the compulsory liquidation proceedings against the bank, any contractual default interest rate shall be converted into the statutory default interest rate upon the initiation of the proceedings, unless the agreed default interest rate is lower than the statutory rate.

(3) The consequences referred to in the first and second paragraphs of this article shall not apply to the mutual obligations between the bank and its creditors in accordance with a netting or set-off arrangement.

Article 187

(Contingent claims)

(1) If a creditor’s claim is subject to a suspensive condition and this condition has not been met before the initiation of compulsory liquidation proceedings, the claim shall expire.

(2) The previous paragraph shall not prejudice the counterparty’s right to demand compensation from the bank for shortening the time limit for complying with the suspensive condition under the general rules of contractual obligation.

Article 188

(Set-off rules)

(1) If the conditions for the set-off of mutual claims under a contract or a rule have been met before the initiation of compulsory liquidation proceedings or on the date of initiation of such proceedings, the initiation of compulsory liquidation proceedings shall not affect a creditor’s or a bank’s rights to set off such obligations even after the initiation of the compulsory liquidation proceedings against the bank.

(2) When a mutual claim is denominated in another currency or is realised otherwise as a counterclaim on the date of the initiation of compulsory liquidation proceedings, this claim may be set off against a counterclaim provided that the various currencies or subjects of realisation of mutual claims are interchangeable under market conditions at the place of realisation.

(3) If a creditor exercises their set-off right in accordance with the first and second paragraphs of this article, the creditor shall notify the bank thereof within 15 days of the initiation of compulsory liquidation proceedings. After the expiry of this period, the creditor may exercise their set-off right only in agreement with the bank.

(4) A creditor that has acquired a claim against a bank through the previous creditor’s assignment may, having regard for the first and second paragraphs of this article, set off their liabilities to the bank only if the bank was notified of the assignment of the claim to this creditor at least six months before the initiation of compulsory liquidation proceedings.

(5) If a claim against a bank occurred after the initiation of compulsory liquidation proceedings or if a creditor acquired a claim against a bank through the previous creditor’s assignment after the initiation of compulsory liquidation proceedings against the bank or in the last six months before the initiation of such proceedings, the creditor may exercise their right to set off these claims against the counterclaims of the bank that arose before the initiation of the compulsory liquidation proceedings in accordance with the first and second paragraphs of this article, but only subject to agreement with the bank.

(6) Notwithstanding the other provisions of this article, compulsory liquidation proceedings shall not affect netting or set-off rights in accordance with a set-off or netting arrangement.

Article 189

(Membership of payment and settlement systems)

Notwithstanding the other provisions of this act relating to the legal consequences of the initiation of compulsory liquidation proceedings, the initiation of such proceedings shall not affect a bank’s rights and obligations towards payment and settlement systems, particularly not:

1. by causing the cancellation of, changes to or revocation of a transfer order and the set-off of the bank’s claims and liabilities in the system;

2. by restricting or preventing the use of assets or securities held in the settlement account of a system member, including the exercise of any drawing rights from credit lines within the scope of the security in the form of collateral;

3. by restricting or preventing the exercise of rights arising from collateral established for the benefit of the operator of the system or its members or for the benefit of the central banks of Member States or the European Central Bank.

Article 190

(Obligations under contracts for provision of banking services)

(1) A bank shall meet its obligations to creditors under a contract for the provision of banking services unless it exercises its right to withdraw from the contract pursuant to the second paragraph of this article.

(2) A bank may withdraw from a contract for the provision of banking services that lays down the bank’s obligations, notwithstanding conditions for withdrawal from the contract that differ from those determined by the contract or other law, provided that Banka Slovenije consents to the withdrawal. Banka Slovenije shall grant its consent to the exercise of the withdrawal right for each contract or for a specific type of contract if the exercise of such right results in better conditions for achieving the objectives of compulsory liquidation.

(3) The notice period in exercising the withdrawal right referred to in the previous paragraph shall be no less than eight days. The withdrawal right referred to in the previous paragraph shall be exercised in relation to a counterparty on the basis of a decision by Banka Slovenije to grant its consent to the exercise of such right. The bank shall notify the counterparties of the exercise of the withdrawal right referred to in the previous paragraph and of the consequences of such withdrawal in the manner determined by the contract on communication between the parties. The statement of withdrawal shall become effective upon the publication of Banka Slovenije’s decision granting consent to withdrawal in accordance with Article 249 of this Act, and the contract shall be terminated on the date specified in the decision as the date of termination of the contract.

(4) The fact that the counterparty has not received the notification referred to in the previous paragraph shall not affect the consequences of the withdrawal.

(5) The first and second paragraphs of this article shall not affect the bank’s or the counterparty’s right to withdraw from the contract for the provision of banking services under the conditions determined by the contract or regulations applicable to withdrawal from the contract unless the bank has already exercised its right of withdrawal from this contract pursuant to this Act.

(6) The exercise of the withdrawal right in accordance with this article shall not prejudice the counterparty’s right to demand from the bank compensation for the damage caused by the termination of the contract resulting from the exercise of the withdrawal right under this Act. The compensation payable to the counterparty shall be paid in accordance with the provisions of this Act relating to the payment of the claims of creditors.

(7) If the time limit for the bank’s performance of its obligations under the contract for the provision of banking services that has been defined as an essential element of the contract expires after the initiation of the compulsory liquidation proceedings and the bank fails to perform its obligations within this time limit, the contract shall be deemed to be terminated upon the expiry of this time limit and the other party shall not be entitled to the performance of the aforementioned obligations.

(8) Notwithstanding the other provisions of this article, the set-off or netting arrangements on the withdrawal from the contract shall be subject to the rules governing withdrawal established by the arrangements.

(9) The provisions of this article shall also apply *mutatis mutandis* to mutually unperformed contracts that do not regulate the provision of banking services. If, on the basis of mutually unperformed contracts, the counterparty is required to be the first to perform its obligations to the bank, upon the initiation of compulsory liquidation proceedings against the bank, the counterparty shall be granted the right, notwithstanding other provisions of this article, to refuse to perform its obligations until the bank has performed its obligations or provided appropriate collateral.

Article 191

(Conversion of claims in event of withdrawal from contract)

(1) If the bank and the counterparty have partly performed their obligations under a contract terminated in accordance with the previous article, their mutual non-monetary claims for the return of partial performance shall be converted into monetary claims denominated in euros at the market value applicable on the date of termination of the contract.

(2) Upon the initiation of compulsory winding-up proceedings, a monetary claim denominated in a foreign currency shall be converted into a claim denominated in euros at the rate of exchange determined and published by Banka Slovenije on the date of termination of the contract.

(3) Counterclaims for the return of partial performance shall be set off against each other in accordance with the first and second paragraphs of this article. If the counterparty’s claim for the return of partial performance does not expire in full as a result of the set-off, the remaining claim shall be paid in accordance with the rules of this Act relating to the payment of creditors’ claims.

(4) The bank shall notify the counterparty of the circumstances referred to in this article by sending them a notice referred to in the third paragraph of the previous article.

Article 192

(Restrictions on application of individual contractual arrangements)

The initiation of compulsory liquidation proceedings or individual powers relating to compulsory liquidation shall not affect the counterparty’s right to consider this circumstance a default event or another similar event agreed between the parties that gives the counterparty the right to:

1. call a guarantee or exercise the right to early offset in accordance with the law governing financial collateral;

2. termination, suspension, modification, netting or set-off.

3.2.5 Conduct of compulsory liquidation proceedings

3.2.5.1 Compulsory liquidation plan

Article 193

(Compulsory liquidation plan)

(1) The liquidator shall submit a report on the bank’s financial situation and a compulsory liquidation plan to Banka Slovenije within four months of the initiation of compulsory liquidation proceedings; the compulsory liquidation plan shall include the following:

1. an action plan to wind up the bank’s operations, including by using the tools for liquidating the bank’s assets, which includes an overview of the main activities to be carried out in the asset liquidation process, and a list of the anticipated deadlines for the completion of activities;

2. a list of the bank’s recognised liabilities to its creditors in accordance with Article 194 of this Act;

3. the estimated costs associated with the implementation of compulsory liquidation measures and other costs incurred in the compulsory liquidation proceedings, including contingency costs;

4. an assessment of unforeseeable events that could affect the bank’s liabilities or the implementation of compulsory liquidation measures;

5. a proposal for the use of financial assets in compulsory liquidation procedures and tools, including a proposal for the use of assets within the framework of the deposit guarantee scheme, for the payment of guaranteed deposits or for other compulsory liquidation measures that ensure that depositors maintain access to guaranteed deposits.

(2) The liquidator shall attach the following documents to the compulsory liquidation plan:

1. a list of outstanding on-balance-sheet and off-balance-sheet liabilities disclosed in the statements and other records kept by the bank, with an indication of the liabilities to individual creditors ranked by priority of repayment in the event of the bankruptcy of the bank;

2. updated financial statements as at the date prior to the initiation of compulsory liquidation proceedings, drawn up in accordance with the International Financial Reporting Standards;

3. an independent assessment of the value of the bank’s assets made in accordance with the International Valuation Standards by assuming a compulsory sale (liquidation valuation);

4. an opening balance sheet as at the date of the initiation of the compulsory liquidation proceedings, drawn up in accordance with accounting solutions for companies in bankruptcy, as determined by the Slovenian Accounting Standards.

(3) The liquidator shall prepare and submit to the tax authority the tax return as at the day prior to the initiation of the compulsory liquidation proceedings, with the contents and within the deadlines specified by the law governing tax procedure and the law governing taxation. The liquidator shall not be responsible for irregularities in the financial statements referred to in point 2 of the previous paragraph and in the final tax statement prepared on the basis thereof:

1. if the cause of such irregularities are:

* false or incomplete information provided to the liquidator by members of the bank’s management board or senior management,
* errors or deficiencies in the bank’s business documentation that occurred before the initiation of the compulsory liquidation proceedings, or
* other acts or omissions by the bank or its management board or senior management; and

2. if the liquidator could not identify or remedy the irregularities despite having acted with due professional diligence.

(4) The valuation referred to in point 3 of the second paragraph of this article shall be made by an independent appraiser.

(5) The independent valuation of the bank’s assets shall serve as the basis for determining an appropriate tool for liquidating the bank’s assets in compliance with the objectives of compulsory liquidation and for defining the assets, rights and liabilities to be transferred or eliminated by means of a liquidation tool, including the determination of the amount of any consideration paid by the recipient for the transfer.

(6) The liquidator shall start implementing the compulsory liquidation plan once it has been approved by Banka Slovenije. The liquidator shall notify Banka Slovenije of all circumstances affecting the implementation of the compulsory liquidation plan and suggest possible amendments to the plan. The amended plan shall be implemented when Banka Slovenije approves the amendments.

Article 194

(List of bank’s recognised liabilities to its creditors)

(1) The liquidator shall submit to Banka Slovenije a list of the bank’s liabilities to its creditors as at the date of the initiation of the compulsory liquidation proceedings within two months of the initiation of the proceedings, and shall take these liabilities into account in the repayment in compulsory liquidation proceedings as:

1. a list of the bank’s liabilities to its creditors in connection with the performance of a contract for the provision of banking services, and

2. a list of the bank’s other liabilities to its creditors.

(2) The list of the bank’s liabilities in connection with the performance of the contract for the provision of banking services shall also include the following information on the bank’s liabilities:

1. the sum of the total liabilities for which no collateral right relating to the bank’s assets has been established in favour of a counterparty, ranked by priority of repayment in the event of the bankruptcy of the bank;

2. the sum of the total liabilities for which a collateral right relating to the bank’s assets has been established in favour of a counterparty.

(3) The list of the bank’s other liabilities to its creditors shall also include the following information on creditors and the bank’s liabilities to creditors, with the exception of the information on creditors and the bank’s liabilities to creditors under a contract for the provision of banking services:

1. identification data on creditors, which shall include the following:

* for a creditor who is a legal person, a sole trader or a registered professional: the business name or personal name, registered office and business address, registration number and tax identification number,
* for a creditor who is a natural person: the personal name, address of permanent residence, and the tax identification number if the person is entered in the tax register or the date of birth if the person has no tax identification number;

2. for each creditor:

* the total amount of claims held by the creditor, ranked by priority of repayment in the event of the bankruptcy of the bank,
* the total amount of secured claims held by the creditor;

3. for each claim:

* the legal basis of the claim,
* the principal amount of the claim, the interest rate and maturity date,
* information as to whether the claim is secured or not; information on a secured claim shall also include data on the bank’s assets on which a collateral right has been established.

(4) Banka Slovenije shall publish the list of the bank’s liabilities relating to the performance of a contract for the provision of banking services and the list of the bank’s other liabilities in accordance with Article 249 of this Act within three business days of receiving the list referred to in the first paragraph of this article.

(5) In connection with a bank’s liabilities arising from the performance of a contract for the provision of banking services that were included in the list referred to in the second paragraph of this article, the liquidator shall notify each creditor of the balance of their claim in writing within eight days of the publication of the list. The liquidator may inform creditors in the manner agreed between the parties to the contract for the provision of banking services.

(6) A notice informing the bank’s creditors of the possibility of filing an objection in accordance with Articles 195 and 196 of this Act shall be published simultaneously with the list of claims referred to in the fourth paragraph of this article.

Article 195

(Objection to list)

(1) A creditor may file a written objection to the list of claims within two months of its publication in accordance with Article 249 of this Act. The written objection shall be filed with the bank.

(2) An objection to the list of liabilities may be filed by the following:

1. creditors in connection with their claims arising from a contract for the provision of banking services when:

* they receive no notice of their claims by the deadline referred to in the fifth paragraph of the previous article, or
* the information in the notice is incorrect; or

2. creditors in connection with their claims other than those arising from a contract for the provision of banking services when:

* their claims do not appear on the list of other claims referred to in the third paragraph of the previous article, or
* the information relating to their claims stated in the list referred to in the third paragraph of the previous article is incorrect.

(3) The creditor’s objection shall state facts in support of the objection and shall submit evidence.

(4) After the expiry of the deadline referred to in the first paragraph of this article, creditors may no longer make any claims relating to the grounds for objection in subsequent compulsory winding-up proceedings, and may thus exercise their claims towards the bank only to the extent and under the conditions referred to in the list or the notice. The previous sentence shall not apply to claims relating to guaranteed deposits exercised by creditors within the framework of the deposit guarantee scheme under the law governing the deposit guarantee scheme.

Article 196

(Objection to bank’s liability to other creditors)

(1) Any creditor may file a written objection to a bank’s liability to another creditor indicated in the list of the bank’s other liabilities referred to in the third paragraph of Article 194 of this Act within two months of the publication of the list. The written objection shall be filed with the bank.

(2) The creditor’s objection shall specify the following:

1. the liability for which the objection is being filed;

2. the attributes of the liability for which the objection is being filed and that affect the treatment of this liability in compulsory winding-up proceedings, including whether the liability is contested in whole or in part;

3. the facts in support of the objection, accompanied by evidence.

(3) After the expiry of the deadline referred to in the first paragraph of this article, creditors may no longer raise any objections to the bank’s liabilities to another creditor in subsequent compulsory winding-up proceedings.

Article 197

(Treatment of objection)

(1) The liquidator shall notify Banka Slovenije of any objections received, and shall submit a proposal regarding the merits of the objection within eight days of the deadline referred to in the first paragraph of Article 195 of this Act or the first paragraph of the previous article. In the event of a large number of objections, Banka Slovenije may extend this deadline period by no more than 15 days.

(2) On the basis of the notification and the proposal referred to in the previous paragraph, Banka Slovenije may confirm or modify the liquidator’s proposal regarding the merits of timely objections within eight days.

(3) The liquidator shall notify the creditor of the merits of their objection within three days of receiving the confirmation or modification in accordance with the previous paragraph.

(4) The fifth paragraph of Article 194 of this Act shall apply to the notification of merits to the creditor.

(5) If Banka Slovenije confirms that the creditor’s objection is substantiated, the liquidator shall submit to Banka Slovenije an amended list of claims that also includes an explanation of changes on the business day following the date of receipt of the confirmation or amendment in accordance with the second paragraph of this article. Banka Slovenije shall publish the amended list of claims in accordance with Article 249 of this Act.

(6) If Banka Slovenije establishes that the creditor’s claim is not substantiated, the creditor may bring action against the following persons or entities before a court of general jurisdiction within one month of the publication of the amended list or of the notice referred to in the fourth paragraph of this article when an amended list is not drawn up:

1. the bank in relation to the grounds for objection referred to in the second paragraph of Article 195 of this Act; or

2. another creditor in relation to the grounds for objection referred to in the second paragraph of the previous article.

3.2.5.2 Operation of banks in compulsory liquidation

Article 198

(General rules on operation of banks in compulsory liquidation)

(1) After the initiation of compulsory liquidation proceedings, banks may only conduct their regular business in the circumstances of compulsory liquidation proceedings and meet their liabilities from this business, having regard for the requirements and restrictions in accordance with this Act.

(2) The operations and actions referred to in the previous paragraph shall include operations and actions that are required for maintaining the value of the bank’s assets, or preventing a decrease in their value, or providing more favourable conditions for liquidating the bank’s assets including the possibility of selling a part of its business as a commercial whole.

(3) The liquidator shall carry out the compulsory liquidation measures defined in the compulsory liquidation plan in accordance with the first and second paragraphs of this article and manage the bank’s assets by:

1. winding up the bank’s activities by terminating the transactions entered into by the bank in the pursuit of its activities;

2. performing activities associated with the application of asset liquidation tools;

3. holding the bank’s assets and entering into transactions for managing the bank’s assets, including buying, selling, swap transactions and other similar legal transactions;

4. exercising the rights of shareholders or company members in relation to the persons in which the bank has an interest and other rights of the bank relating to enforcement or security for the bank’s claims towards its debtors;

5. adopting and implementing an action plan for managing the bank’s risks in compulsory liquidation proceedings, particularly the liquidity and credit risks, by applying *mutatis mutandis* the provisions of the law governing banking in respect of the requirements imposed on the bank in the area of risk management;

6. entering into judicial and extra-judicial settlement and other transactions necessary to exercise the bank’s property rights.

(4) In managing the bank, the liquidator may only take such business risks as are necessary to achieve the compulsory liquidation objectives. The liquidator shall not execute transactions or other acts that could result in unequal treatment of creditors and impede the implementation of the compulsory liquidation plan.

(5) The liquidator shall obtain Banka Slovenije’s approval to carry out management activities that include:

1. borrowing to finance business transactions;

2. entering into judicial and extra-judicial settlement when the value of transactions with individual creditors exceeds EUR 20,000;

3. executing sale, swap or other similar transactions relating to the disposal of the bank’s assets in excess of EUR 500,000;

4. selling the bank’s assets when the sales price achieved by the application of liquidation tools is less than one half of the assessed liquidation value referred to in the second paragraph of Article 193 of this Act.

(6) When granting the approval referred to in the previous paragraph, Banka Slovenije shall determine whether the aforementioned management transactions appropriately contribute to the achievement of the objectives of the compulsory liquidation of the bank. When Banka Slovenije refuses to grant its approval for the execution of a transaction, the liquidator shall be required to repeat the marketing procedures for the sale, swap or other similar transaction, having regard for Banka Slovenije’s instructions.

Article 199

(Termination of bank’s operations)

(1) During compulsory liquidation proceedings, the liquidator shall enter into transactions and perform other activities for the provision of banking services under the contracts concluded by the bank before the initiation of compulsory liquidation proceedings.

(2) After the initiation of compulsory liquidation proceedings, the liquidator shall terminate the legal transactions entered into by the bank before the initiation of compulsory liquidation proceedings and shall settle the bank’s liabilities arising from these transactions subject to the provisions of subchapter 3.2.7 of this chapter and the restrictions pursuant to Article 200 of this Act.

(3) Notwithstanding the first and second paragraphs of this article, the bank shall not be allowed to pay the principal and any interest on the bank’s capital instruments and the bank’s other subordinated liabilities, even when the payment of such liabilities becomes due under a contract. The bank may pay or otherwise settle the aforementioned liabilities only after the bank’s liabilities to preferred and ordinary creditors have been settled in full.

Article 200

(Additional restrictions on operations)

(1) Banka Slovenije shall set restrictions on the bank’s operations in relation to the bank’s continued operations and the termination of its operations.

(2) If the available liquid assets do not suffice for the regular payment of the bank’s liabilities as they fall due, Banka Slovenije may decide to:

1. temporarily suspend payment of the bank’s outstanding liabilities, having regard for the repayment of these liabilities in the reverse order from that applying in the event of bankruptcy; or

2. allow the liquidator to withdraw from a contract or a group of contracts in accordance with Article 190 of this Act and to make early repayment of the bank’s liabilities arising from such contracts by taking into account the rules on the repayment of creditors in the event of the bankruptcy of the bank.

(3) When Banka Slovenije uses the power referred to in point 1 of the previous paragraph in relation to the bank’s outstanding liabilities that are considered guaranteed deposits at the bank, it shall do the following within five business days of withholding payment:

1. decide on the non-availability of deposits in accordance with the law governing the deposit guarantee scheme; or

2. cancel the suspension of the payment of the aforementioned liabilities and ensure the conditions necessary for the performance of the bank’s obligations to depositors by means of the payment or set-off of the bank’s liabilities that are considered guaranteed deposits with the bank.

(4) In addition to the powers set out by this article, the powers pursuant to Articles 149, 150 and 151 of this Act shall apply *mutatis mutandis* to the restriction of the operations of a bank in compulsory liquidation in relation to the bank’s performance of its obligations.

(5) If, after the initiation of compulsory liquidation proceedings, Banka Slovenije determines that the bank’s assets subject to the forced liquidation measures will most likely not suffice to repay all of the bank’s liabilities to its creditors, Banka Slovenije shall, notwithstanding the other provisions of this Act relating to the disposal of the bank’s assets in compulsory liquidation proceedings, prohibit the liquidator from repaying lower-ranked liabilities until the bank’s liabilities ranked by order of priority applied in the event of the repayment of the bank’s claims in bankruptcy proceedings have been paid in full.

Article 201

(Reporting by liquidator)

(1) The liquidator shall report to Banka Slovenije on the implementation of compulsory liquidation measures and powers within the specified time limits.

(2) The liquidator shall immediately report to Banka Slovenije on all material circumstances that impact the business conditions of the bank in compulsory liquidation and on the realisation of the objectives of compulsory liquidation.

(3) The liquidator shall immediately inform Banka Slovenije, the Commission for the Prevention of Corruption and the law enforcement authorities of any suspicion of corrupt and criminal acts which they have noticed within the scope of their work or have been informed of.

(4) The liquidator shall keep books of account and prepare financial statements for the bank in compulsory liquidation proceedings in accordance with accounting solutions for companies in bankruptcy, as determined by the Slovenian Accounting Standards.

Article 202

(Objection due to breach of principle of equal treatment of creditors)

(1) Creditors who believe that actions by a bank in compulsory liquidation proceedings or another creditor breach the principle of the equal treatment of creditors who are in the same situation in relation to the bank may at any time before the issuance of the decision to conclude compulsory liquidation proceedings file an objection with Banka Slovenije and submit a reasoned proposal on how the bank or the liquidator should proceed in a particular case. Banka Slovenije shall invite the bank and the other creditor to whom the objection relates to make statements regarding the facts and circumstances relevant to the decision within eight days.

(2) Banka Slovenije shall decide on the objection within eight days of the expiry of the time limit in which the bank and the creditor are required to make the statement referred to in the previous paragraph.

(3) If Banka Slovenije finds the objection to be substantiated, it shall give the liquidator instructions on how to ensure compliance with the principle of equal treatment of creditors who are in the same situation in relation to the bank.

3.2.6 Asset liquidation tools

3.2.6.1 Asset liquidation tools in general

Article 203

(Application of liquidation tools)

(1) Banka Slovenije shall issue a decision on the application of tools for liquidating a bank’s assets. The liquidator shall take all reasonable measures to carry out the liquidation of assets under market conditions, having regard for the circumstances of the case and the assessed liquidation value of the assets referred to in the second paragraph of Article 193 of this Act.

(2) In applying liquidation tools, the liquidator shall market or make arrangements for the marketing of the assets, rights and liabilities that it intends to transfer. Assets, rights and liabilities may be marketed individually or jointly in one or several offers.

(3) Notwithstanding the first and second paragraphs of this article, Banka Slovenije may also apply an asset liquidation tool in compulsory liquidation proceedings without complying with the requirements for the marketing of assets, rights and liabilities referred to in the second paragraph of Article 204 of this Act when compliance with these requirements might jeopardise the effectiveness of the liquidation tool or the achievement of compulsory liquidation objectives.

Article 204

(Marketing criteria in application of asset liquidation tools)

(1) The liquidator shall consider the following marketing criteria in the application of asset liquidation tools:

1. ensuring the transparency and proper presentation and representation of the assets, rights, and liabilities that are the subject of the offer, having regard for the circumstances of the case and, in particular, the need to maintain financial stability;

2. preventing the undue favouring of or discriminating against a potential purchaser or recipient;

3. preventing any conflict of interest;

4. preventing the granting of an unfair advantage to any potential purchaser or recipient;

5. taking account of the need to effect rapid liquidation measures;

6. achieving the highest possible price.

(2) The marketing of assets, rights and liabilities for the purposes of compulsory liquidation proceedings shall include a public auction, a binding tendering procedure or direct negotiations with certain purchasers or recipients so as to allow the liquidator to address the offer for negotiations to at least three potential purchasers or recipients.

(3) The marketing criteria referred to in the first paragraph of this article shall not exclude the option of only addressing the offer to certain potential purchasers or recipients if this does not unduly favour or discriminate against any potential recipients.

(4) The liquidator may delay public disclosure of the bank’s inside information on the marketing of assets, rights and liabilities in accordance with Articles 17(4) and 17(5) of Regulation 596/2014/EU relating to the application of liquidation tools.

Article 205

(Consideration in relation to compulsory liquidation tools)

Any consideration provided by the recipient in connection with the sale of business, less the costs in connection with the use of the liquidation tool charged in accordance with Article 15 of this Act, shall be the income of the bank in compulsory liquidation proceedings.

3.2.6.2 Sale of business

Article 206

(Sale of business tool)

(1) In the application of the sale of business tool, all or individual assets, rights or liabilities of a bank in compulsory liquidation, including its contractual relationships for the provision of banking services, shall be transferred to the recipient, who shall pay to the bank appropriate consideration for the transfer. The sale of business tool may be used several times in order to ensure additional transfers to the same or different recipients.

(2) The consideration referred to in the previous paragraph shall be in the form of assumption of the bank’s liabilities or monetary consideration.

(3) The liquidator and the recipient that offered the most favourable terms, having regard for the criteria referred to in Article 204 of this Act, shall enter into a transfer agreement under a suspensive condition, which shall be fulfilled when Banka Slovenije issues a transfer decision in accordance with the fourth paragraph of this article.

(4) Banka Slovenije shall issue a decision to transfer assets, rights and liabilities to the recipient on the basis of the transfer agreement (hereinafter: transfer decision) provided that, no later than the time limit agreed in the agreement, the recipient:

1. pays the agreed monetary consideration to the bank if such consideration is agreed in the agreement; or

2. submits a statement and evidence that the recipient has met all the conditions for assuming the bank’s liabilities, provided that consideration for assuming these liabilities has been agreed on in the transfer agreement.

(5) If the recipient fails to meet the conditions referred to in the previous paragraph within the agreed time limit, the transfer agreement shall be terminated.

(6) The transfer of assets, rights or liabilities referred to in the first paragraph of this article shall not require the consent of the bank’s shareholders or the creditor, debtor or any third party exercising its rights in respect of the assets, rights or liabilities being transferred.

Article 207

(Additional requirements concerning sale of business)

(1) If the value of assets, rights or liabilities being sold or transferred cannot be determined on the basis of comparable market prices, the liquidator shall obtain non-binding offers or carry out other activities to obtain information that is important for assessing the most favourable terms of the sale or transfer.

(2) Upon the transfer of the bank’s assets, rights or liabilities under the sale of business tool, the recipient shall have appropriate authorisation to carry out business with regard to the assets, rights and liabilities transferred. Requests for the granting of an authorisation submitted to the competent authority by the future recipient shall be treated as a priority.

Article 208

(Effects of transfer)

(1) The legal effects of the transfer of the bank’s assets, rights and liabilities to the recipient shall arise on the date of publication of the transfer decision in accordance with Article 249 of this Act.

(2) The transfer of assets, rights and liabilities to the recipient on the basis of the transfer decision shall impact the relationship between the bank and the recipient, and the relationship with individual creditors or debtors of the bank, notwithstanding any restrictions on the transferability of these assets or liabilities resulting from a ban on transfer, application for consent or authorisation for transfer and other similar restrictions determined by a regulation or agreement.

(3) The validity and the effects of the transfer of the assets, rights and liabilities of the bank to the recipient under a transfer decision shall not be subject to any further act by the bank or the recipient, or the creditor’s or the debtor’s consent provided or required in the case of transfer under an agreement or regulations applicable to the transfer of these assets, rights or liabilities.

(4) The bank shall be deemed to act for the account of the recipient in liquidation proceedings from the moment of transfer of the bank’s assets and liabilities to the recipient. From the moment of transfer, the recipient shall assume the bank’s position in the exercise of the rights and obligations in relation to counterparties and third parties in connection with the transferred assets, rights and liabilities.

(5) On the basis of the transfer decision the recipient may exercise all entitlements from appropriate registers and records that are necessary for transferring entitlements pertaining to assets, rights and liabilities vis-à-vis third parties.

(6) The bank’s shareholders, its creditors and other persons making claims in relation to the bank in compulsory liquidation proceedings may not exercise any rights to or in relation to the assets, rights or liabilities transferred.

(7) Article 154 of this Act shall apply *mutatis mutandis* to the protection of the bank’s creditors in a partial transfer of assets, rights and liabilities within the framework of the sale of business in compulsory liquidation proceedings.

(8) In the transfer of assets through the sale of business in compulsory liquidation proceedings, the bank shall not be liable for material defects in the assets being transferred.

Article 209

(Effect of transfer on contracts)

(1) If contractual relations in connection with a bank’s operations are transferred to the recipient through the application of the sale of business tool, all rights and liabilities relating to the bank’s legal position on the basis of valid contractual documentation shall be transferred to the recipient as the bank’s legal successor. Upon assuming the bank’s legal position, the recipient shall be considered the bank’s legal successor.

(2) The transfer of assets, rights and liabilities that also includes the transfer of the bank’s contractual relations to the recipient through the application of the sale of business tool shall not be deemed a justified reason for the termination of or withdrawal from the contract giving rise to such claim or liability. Any contractual arrangement contrary to this provision shall be null and void.

(3) Notwithstanding the first paragraph of this article, a contract may be terminated or rescinded when:

1. the reasons for terminating or rescinding the contract also include other circumstances, and not only the transfer of assets or a contractual relationship to the recipient;

2. the reasons for terminating or rescinding a contract arise from circumstances associated with the recipient.

(4) To ensure the continuity of contracts, Banka Slovenije may stipulate, in connection with the assets, rights and liabilities that in accordance with this Act are transferred to the recipient in compulsory liquidation proceedings, that for certain contracts or types of transactions that are being transferred the conditions for performing the contractual obligations should be modified such that:

1. the recipient assumes the contractual rights and obligations of the bank in compulsory liquidation proceedings and explicitly or implicitly substitutes for the bank in all relevant contractual documents;

2. a change is made to the amount of the bank’s liabilities, including changes in the interest rate.

(5) If the contractual conditions for the provision of banking services are modified in accordance with the previous paragraph, in compulsory winding-up proceedings creditors may demand the residual claim or a higher rate of interest only in relation to the bank in compulsory liquidation proceedings.

(6) The liquidator shall follow Banka Slovenije’s instructions to enter into appropriate arrangements to ensure the continuity of operations and consequently the efficient transfer of the business and the provision of banking services to the recipient.

Article 210

(Special rules for sale of business)

(1) If in the application of the sale of business tool the transfer relates to assets that are subject to a legal or contractual pre-emptive right that is entered in a public register or similar public record established by regulation, the liquidator shall send the pre-emptive right holder the text of the contract with essentially the same content as the contract referred to in the third paragraph of Article 206 of this Act, and shall:

1. invite them to exercise the pre-emptive right by returning a signed copy of the contract within 15 days of receipt of the contract, and

2. call their attention to the fact that the pre-emptive right expires if the holder of such right fails to comply with the previous point.

(2) If the holder of the pre-emptive right fails to return a signed copy of the contract within 15 days of receipt or fails to ensure the conditions for issuing a transfer decision within the time limit defined by the contract, the pre-emptive right shall be terminated.

(3) If in accordance with the first paragraph of this article the holder of a pre-emptive right exercises their right to the assets that are essential for the continued implementation of the activities being transferred to the recipient, Banka Slovenije may issue a decision to transfer the assets to the pre-emptive right holder to provide for, after the transfer, subject to appropriate consideration, the use of the assets so that the recipient can carry on activities for up to 12 months after the transfer.

(4) When Banka Slovenije transfers assets, rights and liabilities to a recipient in compulsory liquidation proceedings against a bank, the provisions of Article 148 of this Act relating to the provision of operational services or premises to the recipient shall be applied to facilitate the effective performance of the transferred business activities of the recipient.

(5) The following third-party rights to the assets subject to transfer shall terminate upon the transfer of the assets and rights to the recipient:

1. a lien, mortgage or land charge;

2. the right to prohibit disposal or encumbrance; and

3. the following personal easements, encumbrances or right of superficies:

* if title to the property that is the subject of the transfer is encumbered by a mortgage or land charge: if they were acquired after the effective date of the earliest mortgage or land charge entered in the land register;
* in other cases: if they were acquired after the effective date of compulsory liquidation proceedings.

(6) Notwithstanding the previous paragraph, the rights of third parties to assets subject to transfer shall not expire if the liabilities of the bank in respect of which such third-party rights have been established are simultaneously transferred to the recipient.

(7) The consideration for the transfer of assets in respect of which a third-party security right has been established after the payment of costs associated with the sale of these assets shall be used to repay the bank’s liabilities secured by the right to the transferred assets. If the consideration less the costs associated with the sale of the assets falls short of the amount necessary to repay the bank’s liabilities to a third party, the liquidator shall, for the purpose of transferring the assets to the recipient, call on the third party as a beneficiary to notify it within 15 days whether they intend to take over the assets at a higher price themselves.

(8) The liquidator shall warn the beneficiary referred to in the previous paragraph that they will be deemed to have given their consent to the sale of assets to the recipient at a specific purchase price unless they submit a timely statement of their intention to take over the assets themself. When the beneficiary submits a timely statement of their intention to take over the assets, the provisions of the third and fourth paragraphs of this article shall apply *mutatis mutandis*.

(9) When the subject of the transfer is real or other property, the ownership of which is acquired by entry in a public register or other similar record, the liquidator shall, acting in accordance with the transfer decision, issue a document enabling the recipient to register their title to these assets.

3.2.6.3 Asset separation

Article 211

(Asset separation tool)

(1) Within the framework of asset separation, Banka Slovenije shall use the bank’s assets to establish one or more companies to which the bank’s assets, rights and liabilities will be transferred, including the contractual relations entered into by the bank for the provision of banking, financial and ancillary financial services, for the separate management of the transferred assets and liabilities aimed at the sale of these assets as a commercial whole (hereinafter: asset management vehicle).

(2) Banka Slovenije shall apply the asset separation tool in particular when:

1. due to the situation in a market for the assets, the liquidation of the assets in accordance with the usual procedures could have a negative impact on one or more financial markets; or

2. transfer to an asset management vehicle is required to ensure maximum liquidation proceeds.

Article 212

(Establishment of asset management vehicle)

(1) An asset management vehicle shall be established as a public limited company or a private limited liability company. An asset management vehicle shall be established for the purpose of liquidating the transferred rights and liabilities of a bank in compulsory liquidation proceedings by selling its ownership interest in the asset management vehicle.

(2) Regulations on the establishment and operation of companies shall apply to the establishment and operation of the asset management vehicle, unless otherwise provided by this Act.

(3) The initial capital of the asset management vehicle shall be provided from the funds of:

1. the bank in compulsory liquidation proceedings;

2. the resolution fund established in accordance with the law governing the bank resolution fund;

3. the deposit guarantee fund established in accordance with the law governing the deposit guarantee scheme.

(4) Unless otherwise provided in this article, the provisions of the third to fifth paragraphs of Article 122 of this Act relating to the management of a bridge bank and Banka Slovenije’s powers in connection with the management of a bridge bank shall apply *mutatis mutandis* to the management of an asset management vehicle.

Article 213

(Transfer to asset management vehicle)

(1) Unless otherwise provided in this article, the provisions of Articles 206 to 210 of this Act on the sale of business shall apply to the transfer of the bank’s rights and liabilities to an asset management vehicle. The transfer to an asset management vehicle shall be made as:

1. contribution of the initial capital of the asset management vehicle, whereby the asset management vehicle provides the bank consideration by delivering to it a proportional share of instruments of ownership; or

2. transfer for consideration, whereby the asset management vehicle provides the bank appropriate monetary consideration for the transferred assets.

(2) The consideration for the transfer shall be determined by taking into account the independent assessment of the liquidation value of the bank’s assets referred to in Article 193 of this Act.

(3) Banka Slovenije may use the same authorisation for transfer a number of times within the asset separation tool in order to ensure the transfer of additional assets, rights or liabilities to the asset management vehicle.

Article 214

(Operation of asset management vehicle)

(1) Banka Slovenije shall appoint one or more liquidators of the bank in compulsory liquidation as managers of the asset management vehicle to manage and represent it in order to achieve maximum proceeds from the liquidation of transferred assets by selling its ownership interest in the asset management vehicle.

(2) The management board of the asset management vehicle shall take account of Banka Slovenije’s instructions.

(3) In pursuing the objectives referred to in the first paragraph of this article, the asset management vehicle shall not assume any responsibility or liability towards shareholders, creditors or other persons related to the bank under compulsory liquidation.

(4) If the management of the asset management vehicle determines that the sale of ownership interests in the asset management vehicle will not be successful, Banka Slovenije may allow the liquidation of its assets at the proposal of the management:

1. by selling all or any assets, rights and liabilities received by the asset management vehicle;

2. by winding up the asset management vehicle in normal insolvency proceedings.

(5) The provisions of Article 128 of this Act relating to the winding-up of a bridge bank shall apply *mutatis mutandis* to the winding-up of an asset management vehicle. The assets remaining after the payment of all creditors in the liquidation of the asset management vehicle shall be distributed proportionally among the members who contributed to the asset management vehicle’s initial capital.

3.2.6.4 Use of financing in connection with liquidation tools

Article 215

(Use of funds from deposit guarantee scheme)

(1) Funds from the deposit guarantee fund established in accordance with the law governing the deposit guarantee scheme may be used in compulsory liquidation proceedings against a bank for the following purposes:

1. contribution of the initial capital of the asset management vehicle in accordance with Article 212 of this Act when the bank’s liabilities for guaranteed deposits are transferred to the asset management vehicle by applying the asset separation tool;

2. payment of the difference between the net value of the bank’s liabilities for guaranteed deposits and the net value of the bank’s assets that are being transferred to the asset management vehicle or to another recipient by applying the sale of business or asset separation tool;

3. a loan to the recipient in the application of the sale of business tool or to the asset management vehicle in the application of the asset separation tool.

(2) The deposit guarantee fund shall provide the funds referred to in the previous paragraph when the application of liquidation tools is ensuring that depositors maintain access to guaranteed deposits.

(3) The amount of funds provided by the deposit guarantee fund for the purposes referred to in the first paragraph of this article shall not exceed the net amount for repaying depositors their guaranteed deposits at a credit institution.

Article 216

(Use of funds of bank resolution fund)

The funds of the bank resolution fund established in accordance with the law governing the bank resolution fund may, notwithstanding the aforementioned law, be used in compulsory liquidation proceedings against a bank for the following purposes:

1. contribution of the initial capital of the asset management vehicle in accordance with Article 212 of this Act when the net value of the bank’s assets that are being transferred is higher or equal to the net value of the bank’s liabilities that are being transferred to the asset management vehicle by applying the asset separation tool;

2. the payment of consideration to the bank when the bank resolution fund acting in the capacity of recipient assumes the assets, rights or liabilities of the bank in compulsory liquidation by applying the sale of business tool.

3.2.7 Repayment of creditors

Article 217

(Liquid assets available for repaying bank’s liabilities)

(1) The liquid assets acquired by the bank by implementing the measures for liquidating its assets shall be used by the liquidator for payment of the costs of compulsory liquidation and payment of its liabilities to creditors, unless the repayment of creditors is excluded or restricted in accordance with this Act.

(2) When the bank’s liquid assets are acquired through the liquidation of its assets for which a collateral right has been established in favour of a counterparty or a third party, and the latter has ceased to apply the liquidation tools and transfer assets to a recipient, the liquidator shall keep such liquid assets separate from other available liquid assets and use them to repay the creditor’s secured claims against the bank (hereinafter: special liquid assets).

(3) After the payment of the costs of compulsory liquidation proceedings in accordance with this Act and having regard for the repayment restrictions in accordance with this Act, the bank’s liquid assets shall be used to repay its creditors on the contractual due date or upon the exercise of the bank’s right to withdraw from the contract pursuant to Article 190 of this Act.

(4) Creditors shall not be entitled to demand payment of their claims against the bank from liquid assets if their claims against the bank have been settled by exercising the set-off right or entering into a settlement agreement or if these assets are transferred to another person as the recipient by implementing liquidation measures.

(5) The liquidator shall obtain the prior approval of Banka Slovenije for settling a bank’s liabilities by set-off or by entering into a settlement agreement.

Article 218

(Special rules for repayment of creditors’ secured claims)

(1) The liquidator shall settle a creditor’s claim against the bank that was secured by collateral on specific assets of the bank from special liquid assets after the payment of the costs of the application of the tool for liquidating such assets by transferring it to a new recipient.

(2) The amount of special liquid assets remaining after the repayment of a creditor’s total claim secured by collateral on these assets may be used to repay unsecured claims of the bank’s creditors in accordance with this Act.

Article 219

(Repayment of bank’s liabilities)

(1) The liquidator shall regularly settle the bank’s liabilities as they fall due from the available and special liquid assets, having regard for the restrictions imposed on the bank’s operations in compulsory liquidation by Banka Slovenije.

(2) When the liquidator exercises their withdrawal right in accordance with Article 190 of this Act, the bank shall be entitled, notwithstanding the general rules on the early repayment right determined by law or by contract, to repay its liabilities early to a creditor, in which case it shall deduct the interest for the period from the date of payment to the contractual due date.

(3) Banka Slovenije may determine the proportion of repayment of the bank’s unsecured liabilities to creditors with regard to the amount of the bank’s liquid assets available for this purpose on the basis of the measures for liquidation of the bank’s assets. If the available liquid assets prove insufficient for full repayment of claims belonging to a particular priority class to be observed in repayment, all claims belonging to this priority class shall be paid in the proportion calculated as the ratio between the amount of available liquid assets and the total amount of liabilities belonging to the particular priority class to be observed in repayment.

Article 220

(Provisions for repaying bank’s liabilities)

(1) Notwithstanding the other provisions of this Act on the repayment of a bank’s liabilities to creditors before the contractual due date, the liquidator shall not pay a liability that is subject to a resolutory condition before its due date, but shall create provisions for the payment of the creditor’s claim either before the contractual due date or before the completion of the compulsory winding-up proceedings against the bank.

(2) In addition to the cases referred to in the previous paragraph, the liquidator shall also create provisions for the payment of the bank’s liabilities when so required by Banka Slovenije if such provisions are justified in connection with an action brought against the bank by a creditor whose claim against the bank is not included in the list of the bank’s recognised liabilities.

Article 221

(Consequences of payment of bank’s liabilities for deposit guarantees)

(1) If, after the initiation of compulsory liquidation proceedings, the bank in accordance with this Act settled its liability to a counterparty that was taken into account in determining the counterparty’s eligible deposit under the law governing the deposit guarantee scheme, the counterparty shall be entitled to a guarantee within the framework of the deposit guarantee scheme in subsequent compulsory winding-up proceedings against the bank only in the amount of the remaining part of the guaranteed deposit as it existed upon the date of initiation of the compulsory liquidation proceedings against the bank.

(2) The settlement of the liability referred to in the previous paragraph shall include the repayment, set-off and settlement of the bank’s liability to a depositor or its transfer to a new recipient.

3.2.8 Other provisions

Article 222

(Costs of compulsory liquidation proceedings against bank)

(1) The costs of compulsory liquidation proceedings against a bank shall include:

1. the costs incurred in connection with the exercise of the powers and tasks of Banka Slovenije in accordance with Article 15 of this Act;

2. the remuneration of liquidators determined in accordance with this Act;

3. other costs for the implementation of asset liquidation tools and repayment of creditors, including the following costs in particular:

* attorney fees,
* costs of accounting services and services for auditing financial statements,
* costs of services provided by independent appraisers,
* intermediation services in the sale of assets on the stock exchange or other regulated markets where only authorised market participants are allowed to trade,
* other services that require special expert knowledge in areas that can be provided in individual proceedings to the extent that they cannot be provided by the bank itself;

4. the bank’s other activities started after the initiation of compulsory liquidation proceedings against the bank in connection with management activities.

(2) The liquidator shall obtain approval from Banka Slovenije before ordering services whose costs will in total exceed EUR 10,000.

(3) Banka Slovenije shall determine the amount of the costs referred to in the first paragraph of this article at least once a month, and shall issue a decision on the payment of these costs.

(4) The costs referred to in the first paragraph of this article shall be repaid in the course of compulsory liquidation proceedings in accordance with Article 15 of this Act, and before repayment to any of the bank’s other creditors.

(5) Each creditor shall cover the costs of their participation in the compulsory liquidation proceedings against the bank.

Article 223

(Termination of compulsory liquidation proceedings)

(1) Banka Slovenije shall issue a decision to terminate compulsory liquidation proceedings when, on the basis of the liquidator’s report, it determines that the bank’s liabilities to its counterparties for the performance of banking services in compulsory liquidation proceedings have:

1. either terminated in full; or

2. terminated in part, and at the same time the bank has no more assets available for liquidation with a view to repaying its remaining liabilities arising from the performance of banking activities.

(2) The termination of the liabilities referred to in the previous paragraph shall include repayment, set-off, settlement and transfer to a new recipient or any other similar method of terminating the bank’s liabilities.

(3) Pursuant to the decision to terminate compulsory liquidation proceedings, Banka Slovenije shall:

1. propose that the competent court initiate bankruptcy proceedings; and

2. dismiss the liquidator, with the dismissal becoming effective on the date of the court’s decision to initiate bankruptcy proceedings against the bank and appoint a receiver.

3.3 Bankruptcy

Article 224

(Application of provisions to bankruptcy proceedings)

Unless otherwise provided by this Act, the provisions of the law governing financial operations, insolvency proceedings and compulsory winding-up relating to bankruptcy proceedings against companies shall apply to bankruptcy proceedings against banks.

Article 225

(Decision to initiate bankruptcy proceedings)

(1) The court’s decision to initiate bankruptcy proceedings against a bank shall be based exclusively on a proposal by Banka Slovenije.

(2) Banka Slovenije shall submit a proposal to initiate bankruptcy proceedings to the competent court on the date of the decision to terminate compulsory liquidation proceedings against the bank. The decision to terminate compulsory liquidation proceedings against the bank shall be attached to the proposal.

(3) The court shall issue the decision to initiate bankruptcy proceedings against the bank on the business day following the date of receipt of the proposal referred to in the previous paragraph. For the purposes of deciding on the initiation of bankruptcy proceedings against the bank, it shall be deemed that the level of the bank’s assets will not be sufficient to cover the claims of all its creditors and that the bank is unable to meet its outstanding obligations regularly, and no evidence to the contrary shall be admitted.

(4) Banka Slovenije shall be exempt from fees and charges during bankruptcy proceedings initiated by the court at its proposal.

(5) No appeal shall be allowed against the court’s decision to initiate bankruptcy proceedings against the bank.

Article 226

(Business administrator and receiver)

(1) A receiver shall be appointed by the court at the proposal of Banka Slovenije. The receiver shall be a body in bankruptcy proceedings, and shall perform the activities of an administrator in bankruptcy in accordance with the law governing financial operations, insolvency proceedings and compulsory winding-up.

(2) Banka Slovenije shall appoint one or more administrators with experience in banking (hereinafter: business administrators). The business administrator shall work with the receiver in the management and liquidation of the bankruptcy estate, and shall uphold Banka Slovenije’s instructions in the performance of their activities.

(3) Banka Slovenije may dismiss the business administrator or propose that the court dismiss the receiver. When there are grounds for dismissing the receiver pursuant to the law governing financial operations, insolvency proceedings and compulsory winding-up, the court shall notify Banka Slovenije of such grounds prior to making the decision on their dismissal and invite it to express its views on the grounds for dismissal within a period of time of no less than three and no more than eight days.

(4) Business administrators shall regularly report to Banka Slovenije on bankruptcy proceedings and the repayment of creditors, in particular on claims arising from deposits. Banka Slovenije shall set out the detailed content and scope of the reporting.

Article 227

(Lodgement and treatment of claims from eligible deposits)

(1) Notwithstanding the provisions of the law governing financial operations, insolvency proceedings and compulsory winding-up, the deposit guarantee fund shall, in connection with the claims lodged in bankruptcy proceedings, submit to the receiver a request for the payment of guaranteed deposits under the deposit guarantee scheme paid by the fund to individual investors under the deposit guarantee scheme pursuant to the law governing the deposit guarantee scheme when the fund’s claims towards the bank have not been satisfied in compulsory liquidation proceedings:

1. if the payment of coverage was made before the initiation of bankruptcy proceedings: within 15 days of the initiation of bankruptcy proceedings;

2. if the payment was made after the initiation of bankruptcy proceedings: within eight days of the payment of the coverage to the repayment bank.

(2) Simultaneously with the request referred to in the previous paragraph, the deposit guarantee fund shall submit to the receiver a list of eligible deposits that are taken into account in determining each depositor’s guaranteed deposit, including the data on depositors, in accordance with the law governing the deposit guarantee scheme. Notwithstanding the provisions of the law governing financial operations, insolvency proceedings and compulsory winding-up, depositors’ claims for guaranteed deposits placed with the bank shall be deemed to have been lodged in bankruptcy proceedings on the date when the deposit guarantee fund submits a list of eligible deposits to the administrator.

(3) If, in accordance with the law governing the deposit guarantee scheme, the deposit guarantee fund pays to the depositor an eligible deposit with a bank in an amount exceeding EUR 100,000, the deposit guarantee fund shall notify the receiver accordingly within eight days of making the payment.

Article 228

(Exclusion of set-off)

(1) In the event of the bankruptcy of a bank, the provisions of the law governing financial operations, insolvency proceedings and compulsory winding-up relating to a set-off resulting from the initiation of bankruptcy proceedings shall only apply on the basis of the statement of the receiver on the set-off, except when:

1. the contractual arrangement explicitly sets out the counterparty’s right to set-off or netting on the basis of a set-off or netting arrangements; or

2. the law explicitly excludes the set-off of certain claims.

(2) Except in cases referred to in points 1 and 2 of the previous paragraph, the receiver may exercise their right to set off a bank’s claims with a creditor’s counterclaims as a form of repayment of the creditor’s claim within the framework of the distribution of the bankruptcy estate, provided that the creditors’ claims to be paid before the bank’s liability in accordance with the priority class of repayment in the event of the bank’s bankruptcy are paid in full before the bank’s liability that is the subject of the set-off statement. The receiver may set off a bank’s claims against a creditor’s counterclaims in a proportion equivalent to the proportion of the other claims of creditors ranked in the same priority class.

(3) Before the set-off statement, the receiver may obtain information as to whether a depositor has exercised their right to the payment of a guaranteed deposit in an amount exceeding EUR 100,000 under the law governing the deposit guarantee scheme, and may decide on a set-off only if the request for payment is rejected.

Article 229

(Exclusion of contesting)

Notwithstanding the law governing financial operations, insolvency proceedings and compulsory winding-up, the following may not be contested in bankruptcy proceedings against a bank:

1. legal acts performed by a liquidator in compulsory liquidation proceedings;

2. payments for bills and cheques when the counterparty had to receive payment in order to prevent the bank from losing the right of recourse against other drawees of bills or cheques.

Article 230

(Order of repayment of liabilities of bank in bankruptcy)

(1) In bankruptcy proceedings payments from the bankruptcy estate shall first be made to settle the outstanding costs of compulsory liquidation proceedings and costs of bankruptcy proceedings.

(2) After the repayment of the costs referred to in the previous paragraph, the overall distribution estate shall be used to repay creditors’ claims in the following order:

1. preferred claims;

2. guaranteed deposits;

3. claims with original maturity of less than seven days, held by:

* an institution that is not part of the same group, or
* payment or settlement systems or operators of or participants in these systems if the claims arise from the resolution entity’s participation in a payment or settlement system and the settlement in such system is subject to the final settlement of orders in the event of insolvency or other membership termination procedure, as defined by the law governing payment services and systems or the law governing the financial instruments market;

4. eligible deposits by depositors who are natural persons or legal persons that meet the criteria for micro, small and medium-sized enterprises as defined by the law governing companies, in amounts exceeding guaranteed deposits, including deposits that could be deemed eligible had they not been paid into a subsidiary of a third-country bank;

5. other eligible deposits not covered by points 2 or 4 of this paragraph;

6. bank deposits that are not deemed to be eligible, or claims referred to in point 3 of this paragraph, including:

* deposits by banks and investment firms and other financial institutions made on their behalf and for their account,
* deposits by insurance undertakings, reinsurance undertakings and insurance holding companies,
* deposits by undertakings for collective investment in transferable securities, including investment undertakings of the closed-ended type,
* deposits by pension funds and pension companies,
* deposits by governments and central banks, and deposits by entities that are direct or indirect users of the state budget,
* deposits by local communities and deposits by direct and indirect users of the budgets of local communities;

7. unsecured claims other than claims from debt securities and similar instruments issued by the bank;

8. unsecured claims from debt securities and other similar financial instruments issued by the bank, other than debt instruments referred to in point 9 of this paragraph;

9. unsecured claims from debt instruments that meet the following conditions:

* their original contractual maturity is at least one year,
* they do not have embedded derivatives, and are themselves not derivatives,
* the relevant contractual documentation or prospectus explicitly states in connection with their issuance that, in the event of compulsory winding-up proceedings against the bank, claims from these instruments are repaid after claims referred to in points 1 to 8 of this paragraph, and before subordinated claims referred to in point 10 of this paragraph;

10. subordinated claims that under a contractual arrangement between the parties are repaid after the repayment of the claims referred to in points 1 to 9 of this paragraph in the event of compulsory winding-up proceedings against the bank;

11. claims from instruments of ownership, including claims from instruments of ownership issued by the bank that meet the criteria for Common Equity Tier 1 instruments, and other subordinated claims that according to contractual arrangements are repaid simultaneously with claims from instruments of ownership in the event of compulsory winding-up proceedings against the bank.

(3) The claims referred to in point 2 of the previous paragraph shall be exercised by the deposit guarantee fund in bankruptcy proceedings, and shall include the claims of the deposit guarantee fund against the bank arising from:

1. payments for covering guaranteed deposits in accordance with the law governing the deposit guarantee scheme, where depositors’ claims are transferred to the deposit guarantee fund in the amount of the paid coverage;

2. payment of the contribution provided in accordance with this Act by the deposit guarantee fund in resolution or compulsory liquidation proceedings against the bank.

(4) The subordinated claims referred to in point 10 of the second paragraph of this article shall be further itemised into priority classes of subordinated claims, and shall be repaid from the general bankruptcy estate in the following order:

1. subordinated claims not classified into any category referred to in points 2 to 3 of this paragraph;

2. claims from instruments issued by the bank that meet the criteria for the bank’s Tier 2 instruments, and other subordinated claims that according to contractual arrangements are repaid simultaneously with claims from Tier 2 instruments in the event of the bank’s insolvency;

3. claims from instruments issued by the bank that meet the criteria for the bank’s Additional Tier 1 instruments, and other subordinated claims that according to contractual arrangements are repaid simultaneously with claims from Additional Tier 1 instruments in the event of the bank’s insolvency.

(5) The debt instruments referred to in the second to fourth paragraphs of this article are bonds and other forms of transferable debt, and instruments creating or acknowledging a debt. Debt instruments with a variable interest rate based on a widely-used benchmark rate, and debt instruments that are not denominated in the domestic currency of the issuer, provided that the principal, the repayment and the interest are denominated in the same currency, shall not be deemed debt instruments with embedded derivatives solely on the grounds of the aforementioned attributes.

(6) A bank or an entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act that issues a debt instrument with the attributes referred to in points 8, 9 or 10 of the second paragraph of this article shall announce the issue in the list of issued debt instruments on its website by no later than the day of the initial sale of the debt instrument. The announcement shall include the following data for each issue or series:

* the ticker symbol of the particular issue of the debt instrument;
* the issuer’s total liabilities from the particular issue;
* the total number of debt instruments issued in the particular issue;
* the date of issue and the date of contractual maturity of the liabilities from the debt instruments;
* the ordinal number of the order of repayment of the liabilities from the particular issue in the event of compulsory winding-up proceedings, having regard for the preferred order of repayment referred to in the second and fourth paragraphs of this article.

(7) When an entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act issues debt instruments with the attributes referred to in points 8, 9 or 10 of the second paragraph of this article that are classed as items of the institution’s own funds, the provisions of this article shall apply *mutatis mutandis* in ordinary insolvency proceedings applying to that entity, notwithstanding the provisions of other laws with regard to the determination of the order of repayment of claims from these instruments. If individual instruments or liabilities of that entity are only recognised in part as an own funds item, the instrument or liability shall be classed in full as claims from own funds items.

CHAPTER 4: PROCEDURE FOR DECISION-MAKING AND JUDICIAL REVIEW AND RELATIONS WITH AN INTERNATIONAL ELEMENT

4.1 Decision-making procedure of Banka Slovenije

4.1.1 General

Article 231

(Application of provisions on procedure)

Banka Slovenije shall decide on individual matters within its competence under this Act, in accordance with the procedure laid down by the law governing general administrative procedure, unless otherwise provided by this Act.

Article 232

(Conduct of procedure and power to make decisions)

(1) Individual matters that pursuant to this Act or Regulation 806/2014/EU fall within the competence of Banka Slovenije shall be decided by the Governing Board of Banka Slovenije as a collegiate body.

(2) Until an administrative act is issued, the procedure shall be conducted by an authorised person of Banka Slovenije who meets the requirements for conducting administrative procedures defined by the law governing administrative procedure and is authorised by the Governor of Banka Slovenije for this purpose.

(3) Banka Slovenije shall decide on matters in accordance with this Act *ex officio*, unless this Act provides that individual issues should be decided at the proposal of the client.

(4) Where, pursuant to this Act or Regulation 806/2014/EU, the resolution entity submits an application to Banka Slovenije whose resolution is within the competence of the Single Resolution Board, Banka Slovenije shall reject the application by a reasoned decision, unless this kind of application must be submitted to Banka Slovenije in accordance with Regulation 806/2014/EU.

(5) Judicial review proceedings may be initiated against the decision referred to in the previous paragraph.

Article 233

(Participants in procedure)

(1) A party to the decision-making procedure of Banka Slovenije shall be a bank or other resolution entity in relation to which Banka Slovenije performs the tasks and exercises its powers in bank resolution or compulsory winding-up.

(2) Participants in Banka Slovenije’s decision-making procedure may also include other persons under the conditions set out in this Act.

(3) The provisions of Articles 43, 44, 45, 142 and 143 of the General Administrative Procedure Act (Official Gazette of the Republic of Slovenia, Nos. 24/06 [official consolidated version], 105/06 [ZUS-1], 126/07, 65/08, 8/10, 82/13 and 175/20 [ZIUOPDVE]) shall not apply to the participants in Banka Slovenije’s decision-making procedure pursuant to this Act.

(4) A party that misses the deadline or fails to attend an oral hearing in which it should have made or submitted proposals, statements and objections may not make or submit them after the expiry of the time limit or after the end of the oral hearing.

Article 234

(Service of documents)

(1) Unless otherwise provided for specific cases by this Act, documents to be served on a legal person or a sole trader under this Act shall be served on a person authorised to receive them or, in the absence of such a person, to another employee in the office or on the premises.

(2) The service of documents on members of a bank’s management board or members of another resolution entity’s management shall be effected by service on the bank or the resolution entity. When documents are served on a bank or a resolution entity, they shall be deemed to have been served on the members of the management board or supervisory board.

(3) Decisions issued by Banka Slovenije shall be deemed to be served when they are published in accordance with Article 249 of this Act, unless this Act stipulates service in person.

Article 235

(Inspection of documents and access to confidential information)

(1) A party shall have the right to inspect the documents of a case that is subject to decision-making by Banka Slovenije and to make transcripts or copies of documents in paper or electronic form at its own cost. The inspection, transcription and copying of documents shall be supervised by a designated official.

(2) After the publication of the decision in accordance with Article 249 of this Act, the right referred to in the previous paragraph may also be exercised by a person to whom the second paragraph of Article 247 of this Act gives the right to participate in the judicial review proceedings under this Act.

(3) The inspection and transcription of documents pursuant to the first and second paragraphs of this article shall be requested in writing. In the event of doubt, Banka Slovenije may require the person referred to in the previous paragraph to explain in writing their legal benefit from the right to participate in a procedure under this Act and submit appropriate evidence.

(4) If in Banka Slovenije’s decision-making procedure documents are used that contain information that is considered a professional secret of a person other than a party to this procedure, Banka Slovenije shall invite the person to whom the information refers to identify, in the document, the information which that person deems confidential and to provide justification with regard to its confidentiality within a time limit not exceeding eight days. Banka Slovenije shall decide on a request for the inspection, transcription or copying of documents within 20 days. The restriction on disclosure referred to in this paragraph shall not apply to information constituting a resolution entity’s professional secret.

(5) Having regard for the assessment pursuant to Article 21 of this Act and with regard to the legitimate interest of the person requesting the disclosure of specific confidential information referred to in Article 18 of this Act, Banka Slovenije shall disclose to this person specific confidential information to the extent necessary to safeguard the legitimate interest of such person.

(6) Before disclosing documents, Banka Slovenije shall redact personal information and other confidential information referred to in the fourth paragraph of this article and the confidential information referred to in the previous paragraph. Documents shall be disclosed to a person referred to in the first and second paragraphs of this article without personal or other confidential information to the extent that takes into account the legitimate interests of the aforementioned persons.

(7) If the conditions referred to in the first to fifth paragraphs of this article are not met in relation to the request for the inspection of the documents of the case, Banka Slovenije shall issue a decision refusing the request. The person who has requested the inspection of the documents of the case may initiate judicial review proceedings against the decision refusing the request.

(8) Banka Slovenije shall set, by a tariff, a fee that is charged to a person referred to in the first and second paragraphs of this article for the inspection, transcription and copying of documents, which shall reflect the actual costs arising in connection with these actions.

Article 236

(Types of acts)

(1) In exercising its powers and tasks concerning the resolution or compulsory winding-up of banks, Banka Slovenije shall decide by issuing resolutions, orders and decisions.

(2) Banka Slovenije shall decide by issuing a decision, unless this Act provides that individual issues should be decided by orders or resolutions.

(3) Via a resolution Banka Slovenije shall decide on issues relating to or arising in connection with the procedure. A resolution shall be substantiated, and shall include a notice of legal remedies only if special judicial review proceedings are allowed against it.

Article 237

(Legal remedies in Banka Slovenije procedure)

(1) There shall be no appeal against acts issued by Banka Slovenije pursuant to this Act.

(2) An objection shall be allowed against the following decisions of Banka Slovenije:

1. a decision to initiate resolution proceedings;

2. a decision to apply resolution tools or other resolution powers; and

3. a decision to apply compulsory liquidation tools or other compulsory liquidation powers.

(3) An objection shall be allowed against an order in the cases and under the conditions set out in this Act.

(4) No claim for reinstatement may be made nor may the application of any extraordinary remedies be requested in the procedure of decision-making by Banka Slovenije.

(5) Judicial review of acts issued by Banka Slovenije shall be provided in the proceedings determined in this Act (hereinafter: judicial review proceedings), unless otherwise provided for individual cases.

Article 238

(Enforceability)

(1) Banka Slovenije’s decisions shall become enforceable when they become final, unless otherwise provided for individual cases by this Act. Decisions shall become final upon the expiry of the time limit for an objection.

(2) The decisions referred to in the second paragraph of the previous article shall become enforceable upon service.

4.1.2 Order

Article 239

(Order)

(1) An order shall include a precise definition of the requirements imposed on a party and the time limit within which the party must comply.

(2) A party shall have the right to lodge an objection against an order within eight days of service.

(3) If the entitled person has lodged an objection on time, the time limit for complying with the requirements set by the order shall be extended by the period from the lodging of the objection to the service of the decision on the objection.

(4) Notwithstanding the previous paragraph, Banka Slovenije may issue an order deciding that the objection shall not stay the fulfilment of the requirements within the specified time limit when the enforcement of the order cannot be deferred due to the nature of the requirement.

(5) An objection against an order shall be allowed when:

1. a requirement cannot be complied with within the time limit or in the manner specified by the order;

2. the enforcement of the order would cause an act in contravention of regulations;

3. the facts established in the order are erroneous or incomplete, or material law is erroneously applied with regard to the established facts;

4. a requirement imposed by the order is unjustified in respect of the established facts;

5. the order was issued to a person not subject to Banka Slovenije’s powers pursuant to this Act; or

6. there has been a substantial breach of procedural rules.

(6) A substantial breach of procedural rules under this Act shall be:

1. when the order was issued by a person not authorised to issue orders;

2. when the party is a person not subject to Banka Slovenije’s powers pursuant to this Act;

3. when a person who should have been excluded by law participated in the decision-making or the conduct of the procedure before the issuance of the order; or

4. when the order cannot be reviewed.

Article 240

(Content and review of objection)

(1) An objection against an order shall include:

1. an indication of the order against which the objection is lodged;

2. a statement as to whether the order is being contested in whole or in part;

3. the grounds for the objection; and

4. other information that must be included in any application under the law governing general administrative procedure.

(2) The applicant shall pay a fee set by the tariff of Banka Slovenije for deciding on the objection.

(3) In its objection against an order, a party may state facts demonstrating that the facts of the matter have been erroneously or incompletely established and that, as a result, the requirements set out in the order are unjustified, and may present evidence to prove the existence of the asserted facts. When the party refers to documentary evidence in its objection, it shall attach this evidence to the statement.

(4) In deciding on the objection, Banka Slovenije shall take into account the submitted evidence.

(5) After the expiry of the time limit for an objection, a party shall not have the right to state new facts or present new evidence.

Article 241

(Review of order and decision-making on objection)

(1) Banka Slovenije shall review the order in the part that is being contested by the objection, within the limits of the grounds stated and reasoned in the objection.

(2) Banka Slovenije shall decide on the objection by issuing a decision.

(3) In its decision on the objection, Banka Slovenije may deny or refuse the objection, or modify or vacate the order.

(4) Banka Slovenije shall deny the objection when no objection is allowed, when it is lodged too late, or when it is lodged by an unauthorised person.

(5) If Banka Slovenije establishes the existence of the grounds referred to in points 2, 5 or 6 of the fifth paragraph of Article 239 of this Act, the order shall be vacated.

(6) When Banka Slovenije establishes the existence of the grounds referred to in points 1, 3 or 4 of the fifth paragraph of Article 239 of this Act, it shall vacate or modify the order depending on the nature of the breach.

4.1.3 Decision

Article 242

(Procedure for issuing decision)

(1) The provisions of subchapter 4.1.3 of this chapter shall apply to the procedure for the issuance of a decision by Banka Slovenije in accordance with this Act, unless otherwise provided by the second paragraph of this article.

(2) The provisions of the law governing banking with regard to Banka Slovenije’s decision-making procedure in individual cases shall apply to the procedure for the issuance of the decision on an objection and the decision on the payment of contributions issued by Banka Slovenije under this Act.

Article 243

(Invitation to make statement of facts and circumstances)

(1) Prior to issuing a decision to initiate resolution proceedings by which the fulfilment of the conditions referred to in Articles 68 or 73 of this Act is established, a decision on the fulfilment of the conditions referred to in the third paragraph of Article 97 of this Act, or a decision to initiate compulsory liquidation proceedings, Banka Slovenije shall invite the resolution entity as a party to make a statement about the facts and circumstances relevant to the decision if, in the particular case, the party has not already been given an alternative opportunity to make a statement about these facts and circumstances (hereinafter: invitation to make a statement). The invitation to make a statement shall include:

1. an explicit statement of the facts and circumstances about which the party is supposed to make a statement, and evidence proving those facts;

2. the time limit for making a statement, which may be no less than 24 hours and no more than eight days;

3. instructions to the party that it should attach evidence to its statement if making reference thereto, and that, after the expiry of the time limit, it shall not have the right to state new facts or submit new evidence.

(2) Notwithstanding point 2 of the previous paragraph, Banka Slovenije may extend the time limit for making a statement at the request of the party, provided that this would not jeopardise attainment of the objectives of resolution actions or the efficiency of compulsory winding-up proceedings against a bank.

(3) Notwithstanding the first paragraph of this article, Banka Slovenije shall have no need to invite a party to make a statement of the facts and circumstances relevant for issuing a decision to initiate resolution or compulsory liquidation proceedings before issuing such decision when:

1. the facts can be established on the basis of official data held by Banka Slovenije and no special hearing of the party is required for the protection of the party’s rights or legal entitlements;

2. the decision must be issued without delay to achieve the resolution objectives;

3. the disclosure of information within the framework of the invitation to make a statement would necessarily involve the disclosure of confidential information referred to in Article 18 of this Act, which, having regard for the assessment pursuant to Article 21 of this Act, would have a disproportionately adverse impact on the public interest or the resolvability of the resolution entity, and any adverse impact of disclosure, in particular any unjustified use of this information, would exceed the adverse impact of the non-disclosure of the information concerned.

Article 244

(Statement of facts and circumstances)

(1) In its statement of the facts and circumstances relating to the issuance of a decision to initiate resolution proceedings, a decision on the write-down and conversion of capital instruments and eligible liabilities when the write-down and conversion tool is being applied independently of other resolution actions, or a decision to initiate compulsory liquidation proceedings, the party may state the facts showing that the facts and circumstances cited in the invitation to make a statement do not exist, and may present evidence to prove the existence of the asserted facts. When the party refers to documentary evidence in its statement, it shall attach this evidence to the statement.

(2) After the expiry of the time limit for making statements, the party shall not have the right to introduce new facts or present new evidence.

Article 245

(Decision-making on decision to initiate resolution or compulsory liquidation proceedings)

(1) Banka Slovenije shall decide on a decision to initiate resolution proceedings, a decision on the write-down and conversion of capital instruments and eligible liabilities when the write-down and conversion tool is being applied independently of resolution proceedings, or a decision to initiate compulsory liquidation proceedings without an oral hearing.

(2) Notwithstanding the previous paragraph, Banka Slovenije shall call an oral hearing in the following cases:

1. when witnesses or experts need to be heard to clarify the facts and circumstances;

2. when the procedure involves two or more parties with conflicting interests;

3. in other cases if it considers this to be useful for clarifying the case.

(3) Banka Slovenije shall issue a decision to initiate compulsory liquidation proceedings *ex officio* upon receipt of a notification from the European Central Bank that a bank’s authorisation to provide services has been withdrawn or has expired.

(4) The decision to initiate resolution or compulsory liquidation proceedings shall be served on the resolution entity and published in accordance with Article 249 of this Act.

Article 246

(Decision to apply tools and other powers of resolution and compulsory liquidation)

(1) Banka Slovenije shall issue *ex officio*:

1. a decision to apply resolution tools or other resolution powers, and

2. a decision to apply compulsory liquidation tools or other compulsory liquidation powers.

(2) Before issuing the decision referred to in the previous paragraph, Banka Slovenije shall not be obliged to send an invitation to make a statement of the facts and circumstances to the persons whose legitimate interests have been harmed by the effects of such decision. The decision referred to in the previous paragraph may be contested exclusively in the procedure referred to in Article 247 of this Act.

(3) The decision referred to in the first paragraph of this article shall also be published in accordance with Article 249 of this Act.

(4) Notwithstanding Articles 243 to 245 of this Act, the provisions of this article shall also apply to a decision on the write-down and conversion of capital instruments and eligible liabilities when the tool of write-down and conversion of capital instruments and eligible liabilities is being applied after the initiation of resolution proceedings together with resolution tools.

Article 247

(Review of decisions against which objection is allowed)

(1) The parties and the persons whose rights or legitimate interests have been harmed by the effects of decisions referred to in the second paragraph of Article 237 of this Act may lodge an objection to the decision with Banka Slovenije within two months of the publication of the decision in accordance with Article 249 of this Act. Notwithstanding the provisions of the law governing administrative procedure, an objection may only include allegations that are relevant to the review of the decision and the proposed evidence to be produced in connection with such allegations.

(2) Parties and persons who lodged an objection with Banka Slovenije within the time limit referred to in the previous paragraph shall have the status of parties to the decision review procedure. Persons who did not lodge an objection within the time limit referred to in the previous paragraph may not exercise their rights as parties to proceedings in further judicial or administrative proceedings. Participants in the decision review procedure shall not be entitled to access the written positions of other participants.

(3) Upon the expiry of the time limit referred to in the first paragraph of this article, Banka Slovenije shall decide on the objection on the basis of the objections received.

(4) Banka Slovenije shall as a general rule decide without a prior hearing. Banka Slovenije may conduct an oral hearing when this is necessary for reviewing a decision and clarifying the facts. Banka Slovenije shall publish its decision to hold an oral hearing and a schedule of the hearing on the agency’s website in accordance with Article 249 of this Act.

(5) Banka Slovenije may vacate or modify a decision on the basis of new facts and circumstances established during the review of the decision by deciding to:

1. modify the resolution tools or powers set out in the decision that is the subject of the review;

2. apply additional tools and powers of resolution or compulsory liquidation to ensure efficient implementation of the imposed actions in accordance with resolution or compulsory winding-up objectives or to eliminate any adverse impact of the application of individual tools or powers that could not be foreseen before the issuance of the decision.

(6) When Banka Slovenije establishes, in accordance with the previous paragraph, that resolution or compulsory liquidation actions need to be modified or augmented, and that such modification or augmentation includes the use of resolution or compulsory liquidation tools and powers that also affect persons not affected by the actions laid down by the original decision, it shall publish a summary of the proposed modifications or augmentations in accordance with Article 249 of this Act before taking the decision and shall invite these persons to submit their written observations within a time limit of no less than eight and no more than 15 days after the publication of the summary. The first paragraph of this article shall apply to these persons in connection with the submission of written observations.

(7) In the case referred to in the fifth paragraph of this article, Banka Slovenije shall issue a decision (hereinafter: the review decision), in which it shall take into account the new facts and circumstances justifying a modification or augmentation of the actions, and shall publish it in accordance with Article 249 of this Act. In this decision Banka Slovenije shall take a substantive position on the most significant allegations from objections that were not taken into consideration as a basis for modifying or augmenting the actions.

Article 248

(Power to represent bank)

(1) This article lays down the rules for representing a bank in proceedings against a Banka Slovenije decision:

1. to initiate resolution proceedings and apply resolution tools or other resolution powers; and

2. to initiate compulsory liquidation tools and apply other compulsory liquidation powers.

(2) In the proceedings referred to in the previous paragraph, the bank shall be represented by:

1. its management board, comprising the members of the bank’s management board excluding any authorised persons appointed by Banka Slovenije to perform the function of a member of the bank’s management board in accordance with the law governing banking; or

2. members of the bank’s management board whose power to represent the bank has been terminated on the basis of a Banka Slovenije decision to initiate compulsory winding-up proceedings or a decision appointing special management in resolution proceedings.

(3) In representing the bank the persons referred to in the previous paragraph shall act with the due diligence of a good manager with a view to ensuring appropriate safeguarding of the bank’s interests. Persons whose function as a member of the bank’s management board have been terminated on the basis of a decision to wind up the bank or a decision to appoint special management shall not, merely due to this fact, be relieved of the responsibility, as members of the bank’s management board, to the bank and shareholders regarding due diligence in safeguarding the bank’s interests in the proceedings referred to in the first paragraph of this article.

(4) Shareholders of the bank whose total shares amount to at least one-tenth of the bank’s share capital may demand that the bank’s management board or special management, if such is appointed, for the purposes of safeguarding the bank’s interests in proceedings against the Banka Slovenije decision referred to in the first paragraph of this article, convene the bank’s general meeting of shareholders with the proposal that the general meeting revoke the powers of the persons referred to in the second paragraph of this article to represent the bank in relation to the proceedings referred to in the first paragraph of this article, and appoint other persons to represent the bank in proceedings against the Banka Slovenije decision.

(5) The provisions of the law governing companies relating to decision-making at the general meeting in connection with proposals for electing supervisory board members shall apply *mutatis mutandis* to the convening of the general meeting referred to in the previous paragraph. Notwithstanding the first sentence of this paragraph, the convening of the general meeting shall be announced at least 15 days in advance, and shall only indicate that the general meeting is being convened under this Act for the purpose of decision-making on the power to represent the bank in proceedings against the Banka Slovenije decision.

(6) All shareholders shall be jointly and severally liable for covering the costs in connection with the proceedings for exercising judicial review of the Banka Slovenije decision, including remuneration for persons authorised to represent the bank in accordance with this article. The representatives referred to in the second paragraph of this article may request that shareholders make an advance payment to cover the costs before taking action in connection with the exercise of a legal remedy.

(7) Persons authorised to represent the bank in judicial review proceedings against the decision of Banka Slovenije in accordance with this article may demand that the bank’s management board or special management, if such is appointed, submit all information and documentation held by the bank and required to exercise a legal remedy.

Article 249

(Publication of decisions)

(1) Banka Slovenije shall publish the following on the agency’s website for the publication of content in resolution or compulsory winding-up proceedings against banks on the same day that they are issued:

1. the decision to initiate resolution proceedings referred to in the second paragraph of Article 91 of this Act;

2. the decision to apply resolution tools or other resolution powers referred to in the first paragraph of Article 246 of this Act;

3. the decision to initiate compulsory liquidation proceedings referred to in the first paragraph of Article 173 of this Act;

4. the decision to apply the compulsory liquidation tools or other compulsory liquidation powers referred to in the first paragraph of Article 203 of this Act;

5. the review decision referred to in the seventh paragraph of Article 247 of this Act;

6. the decision to terminate resolution proceedings referred to in Article 93 of this Act;

7. the decision to terminate compulsory liquidation proceedings referred to in the first paragraph of Article 223 of this Act;

8. the decision to suspend specific obligations referred to in the first paragraph of Article 149 of this Act;

9. the decision to restrict the rights of creditors referred to in the second paragraph of Article 150 of this Act;

10. the decision to suspend the right to terminate a contract referred to in the first paragraph of Article 151 of this Act;

11. the decision on approval of the right of withdrawal referred to in the third paragraph of Article 190 of this Act;

12. the summary of the proposed modifications or augmentations of actions referred to in the sixth paragraph of Article 247 of this Act;

13. the order to join cases and appoint a joint representative referred to in the first and fourth paragraphs of Article 256 of this Act;

14. the judgment or order issued in the joint proceedings referred to in the seventh paragraph of Article 256 of this Act.

(2) Banka Slovenije shall publish the following on the agency’s website for the publication of content in resolution or compulsory winding-up proceedings against banks in connection with the initiation of the proceedings and subsequent activities to be taken in the course of resolution or compulsory winding-up proceedings:

1. the following details on the proceedings:

* the identification data of the resolution entity or bank,
* the identification data of Banka Slovenije as the body deciding in the proceedings,
* the type of proceedings and the reference number of the case,
* the date of initiation of the proceedings,
* the date of initiation of the decision review procedure,
* the date when the decision becomes final;

2. the announcement to the shareholders and creditors of the initiation of the proceedings and the legal remedy available, including the date of expiry of the time limit for submitting written observations against Banka Slovenije’s decision, and data on other procedural acts in resolution and compulsory liquidation proceedings;

3. an invitation to eligible acquirers of new instruments of ownership to claim the new instruments of ownership conferred on them in accordance with the second paragraph of Article 112 of this Act;

4. the following documents in connection with resolution proceedings:

* a summary of the report of the special managers;

5. the following documents in connection with compulsory liquidation proceedings:

* a summary of the report of the liquidator,
* lists of the bank’s recognised liabilities, where the lists of liabilities relating to creditors that are natural persons only include the personal name thereof and the amount of the recognised liability,
* invitations to submit bids in connection with the application of tools for liquidation of the bank’s assets,
* restrictions on the bank’s operations in compulsory liquidation proceedings.

(3) It shall be deemed, and no evidence to the contrary shall be allowed, that a shareholder, creditor or any other person whose rights or legitimate interest have been harmed by the effects of the decision has been made aware of the content of the decision referred to in the first paragraph of this article upon the expiry of eight days from the date of publication of this legal act on the agency’s website.

(4) The website for the publication of materials in bank resolution or compulsory winding-up proceedings shall be operated by the agency. The agency shall ensure that the website is designed in such a way that the published data referred to in the first and second paragraphs of this article may be accessed by anyone free of charge.

(5) The agency shall grant Banka Slovenije the possibility of publishing the content referred to in the first and second paragraphs of this article for a flat-rate fee determined by the agency’s tariff.

(6) Banka Slovenije shall be liable for the correctness of the published data on the proceedings and the data included in the decision or other documents published on the agency’s website in accordance with the first and second paragraphs of this article.

(7) Banka Slovenije shall delete the published content referred to in the first and second paragraphs of this article after the expiry of five years from the date of the final conclusion of the proceedings in this matter.

Article 250

(Provision of additional information)

(1) Banka Slovenije shall publish a notice upon the initiation of the proceedings and the main information on the impact of the adopted measures on shareholders, creditors and other persons on its website within three days of the initiation of resolution or compulsory liquidation proceedings.

(2) The resolution entity shall also do the following in connection with the notice and information referred to in the previous paragraph:

1. publish them on its website;

2. publish them in accordance with the rules of the regulated market on which the bank’s shares or other debt instruments are traded;

3. send them to shareholders and other holders of debt instruments that are not admitted to trading on a regulated market, by using the bank’s records or other available registers and databases.

(3) Banka Slovenije shall inform the following authorities and entities of the initiation of resolution or compulsory liquidation proceedings:

1. the competent authority of the Member State in which a bank branch against which proceedings are being initiated is located;

2. the Single Resolution Board;

3. the group-level resolution authority and the consolidating supervisor, as necessary;

4. the competent ministry;

5. the Financial Stability Board and the ESRB;

6. the European Commission, the European Central Bank, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority established in accordance with Regulation 1094/2010/EU, and the European Banking Authority;

7. operators of payment and settlement systems in which the resolution entity is included.

(4) The notice referred to in the previous paragraph shall include a copy of the decision to initiate resolution proceedings or the decision to initiate compulsory liquidation proceedings and information on the effective date of the resolution or compulsory liquidation actions.

(5) When the issuance of a decision to initiate compulsory liquidation proceedings referred to in the first paragraph of this article cannot be delayed due to the protection of the interests of the bank’s clients or other public benefits, Banka Slovenije shall notify the competent authority of the Member State accordingly immediately after the issuance of the decision.

4.2 Judicial review proceedings

Article 251

(Judicial review proceedings)

(1) Judicial review proceedings may only be initiated against a Banka Slovenije decision, unless otherwise provided by this Act.

(2) There shall be no special judicial review proceedings against the following decisions of Banka Slovenije:

1. a decision to initiate resolution proceedings;

2. a decision to apply resolution tools or other resolution powers; or

3. a decision to apply compulsory liquidation tools or other compulsory liquidation powers.

(3) The decision referred to in the previous paragraph may be contested in a lawsuit against a review decision.

(4) A request for judicial review may be filed against a decision to initiate compulsory liquidation proceedings according to the procedure for exercising judicial review of a Banka Slovenije decision set out by the law governing banking. The reasons for the legality of the European Central Bank’s decision to withdraw a bank’s authorisation to provide banking services may not be put forward in judicial review proceedings.

(5) Notwithstanding the previous paragraph, the reasons for issuing a decision to initiate compulsory liquidation proceedings may be contested solely in judicial review proceedings against the European Central Bank’s decision to withdraw a bank’s authorisation to provide banking services or against the European Central Bank’s finding that a bank’s authorisation has expired under the law governing banking.

(6) Judicial review proceedings may also be initiated against a resolution terminating Banka Slovenije’s decision-making process initiated at the request of the client pursuant to this Act.

(7) The rules for exercising judicial review of a resolution of Banka Slovenije in accordance with the law governing banking shall apply to the judicial review proceedings against the order referred to in the previous paragraph and against the decision on an objection to an order and the decision on the payment of a contribution issued by Banka Slovenije under this Act.

Article 252

(Competences and application of rules of procedure)

(1) The Administrative Court of the Republic of Slovenia, sitting in a panel of three judges, shall decide in judicial review proceedings against decisions issued by Banka Slovenije in accordance with this Act, except in the case referred to in the second paragraph of this article.

(2) Decisions on review decisions in judicial review proceedings shall be made by the Supreme Court of the Republic of Slovenia sitting in a panel of five judges.

(3) The provisions of the law governing administrative disputes shall apply *mutatis mutandis* to judicial review proceedings pursuant to this Act, unless otherwise provided by this Act.

Article 253

(Right to judicial review)

(1) A lawsuit against a decision of Banka Slovenije in judicial review proceedings may only be brought by a person who has participated in Banka Slovenije’s decision-making procedure as a party or participant under this Act.

(2) Notwithstanding the provisions of the law governing administrative procedure, the plaintiff may not be a representative of the public interest.

(3) A participant in proceedings who has not passed the national bar exam may perform procedural acts in judicial review proceedings under this Act only through a counsel who has passed the national bar exam.

Article 254

(Lawsuit and response)

(1) A lawsuit in judicial review proceedings shall be filed within 30 days. The deadline period for filing a lawsuit shall run as follows:

1. for a party: from the date of service of the decision;

2. for other participants who have the right to sue in accordance with this Act: from eight days after the publication of the decision in accordance with Article 249 of this Act.

(2) A lawsuit in judicial review proceedings shall not stay the enforcement of the decision.

(3) If a motion to temporarily stay the enforcement of the decision is submitted in the lawsuit, the rebuttable presumption that staying the enforcement of the decision would be contrary to the public interest shall apply.

(4) The time limit for the response to the lawsuit shall be 30 days.

Article 255

(Sessions)

(1) The court may decide without a main hearing if the facts that were the basis for issuing the decision are not disputed between the plaintiff and the defendant.

(2) The parties may also waive the main hearing.

Article 256

(Joinder of cases and appearance in court)

(1) If more than one lawsuit is filed against a decision in judicial review proceedings, the court shall issue an order to join the proceedings for joint hearing and decision-making (hereinafter: joint proceedings). If there are more than 20 plaintiffs, Banka Slovenije shall publish its decision to join the proceedings on the agency’s website immediately upon receipt thereof in accordance with Article 249 of this Act. Notwithstanding the law governing administrative procedure, the order shall be deemed to have been served on all parties to the proceedings on the date of its publication on the agency’s website.

(2) In the case referred to in the previous paragraph, the only parties to the joint proceedings shall be:

1. the resolution entity or the bank under compulsory winding-up proceedings;

2. a shareholder whose holding in the capital of the resolution entity or the bank under compulsory winding-up proceedings exceeds 10% of its share capital;

3. a creditor whose claim that has been reduced or written off as a result of resolution or compulsory winding-up actions exceeds EUR 150,000 before the reduction or write-off;

4. the authorised person or representative of plaintiffs who together meet the conditions referred to in points 2 or 3 of this paragraph, provided that the aforementioned conditions are met on the basis of powers conferred.

(3) The court shall issue the order referred to in the first paragraph of this article informing plaintiffs who do not meet the conditions for independent appearance in joint proceedings that they can appear jointly with any plaintiff referred to in the previous paragraph, subject to mutual agreement.

(4) If more than one plaintiff has the same interest in the event of joint proceedings and would jointly meet the conditions referred to in points 2 or 3 of the second paragraph of this article, the court can appoint on their behalf a joint representative in the event that they are not involved in the proceedings in accordance with the second and third paragraphs of this article when the interests of justice so require. The costs of appointing a joint representative in such case shall be borne by the defendant. Banka Slovenije shall publish the order on the appointment of a joint representative on the agency’s website in accordance with Article 249 of this Act, whereby the order shall be deemed to have been served on all parties to the proceedings.

(5) In the case referred to in the previous paragraph, the joint representative shall carry out acts for all plaintiffs in joint proceedings, and all acts by the court in relation to the joint representative shall be deemed to be acts in relation to all plaintiffs for which they have been appointed.

(6) After the appointment of a joint representative in accordance with the fourth paragraph of this article, the court shall send the lawsuits filed to the joint representative, and set the deadline for joining them in a single lawsuit that includes all of the plaintiffs represented. The court shall not address lawsuits that are not included in the single lawsuit and shall not take a position thereon.

(7) The court shall decide on all lawsuits joined in these proceedings under the first paragraph of this article by issuing a judgment or order in the joint proceedings. The judgment or order shall be served on the persons referred to in the second and fourth paragraphs of this article, and shall be published by Banka Slovenije on the agency’s website in accordance with Article 249 of this Act, whereby the order shall be deemed to have been served on all parties to the proceedings.

Article 257

(Priority decision-making)

Matters in judicial review proceedings are urgent and shall be decided on as a priority by the court.

Article 258

(Limits of review)

(1) The court shall review a decision of Banka Slovenije within the limits of the claim and within the limits of the grounds stated in the lawsuit.

(2) The following shall be deemed a substantial breach of procedural rules under this Act:

1. when the decision was issued by a person or body of Banka Slovenije that is not authorised to issue decisions;

2. when the party was someone who is not a supervised entity;

3. when a person who should have been excluded by law participated in the decision-making or the conduct of the procedure; or

4. when the decision cannot be reviewed.

(3) The court shall use the following assessments in judicial review proceedings against a review decision:

1. complex economic assessments that are made by Banka Slovenije and serve as the basis for the decision to apply resolution or compulsory winding-up actions;

2. the preliminary valuation of the resolution entity’s assets and liabilities carried out in accordance with the first paragraph of Article 80 of this Act;

3. the independent assessment of the treatment of creditors and shareholders carried out in accordance with Article 153 of this Act.

(4) In judicial review proceedings, the court shall admit the evidence required to establish the circumstances referred to in the previous paragraph when:

1. the assessments are based on obviously incorrect data and information;

2. there are clear inconsistencies and contradictions between individual assessments;

3. there are serious doubts about the independence of the person that made the assessments and there is an indication that the assessments cannot be considered to be an appropriate basis for the decision.

(5) In the case referred to in the previous paragraph, the court shall request that a new independent assessment be made, having regard for Articles 80 and 153 of this Act, if it deems that, due to errors and deficiencies, a resolution entity’s shareholders and creditors might have been treated worse than if the resolution entity had been subject to normal insolvency proceedings. The costs of a new independent assessment ordered by the court shall be charged to the budget of the Republic of Slovenia.

(6) In judicial review proceedings against a decision issued by Banka Slovenije for the implementation of the Single Resolution Board’s decisions in accordance with Article 29(1) of Regulation 806/2014/EU, the court shall be bound by the Single Resolution Board’s decision that serves as the basis for the decision of Banka Slovenije. Judicial review of a decision adopted by the Single Resolution Board in accordance with Regulation 806/2014/EU shall be enforced in accordance with Articles 85 and 86 of Regulation 806/2014/EU.

Article 259

(Court decision)

(1) If, in the course of judicial review proceedings against individual review decisions, the court establishes that there are grounds for vacating decisions referred to in the second paragraph of Article 237 of this Act in accordance with the law governing administrative disputes, it shall not vacate the decisions, but shall issue a judgment establishing that the decision is unlawful and calling on Banka Slovenije to submit to the court the proposed measures to be taken to remedy the unlawful consequences for all shareholders and creditors affected by the unlawful decision within 30 days.

(2) The establishment of the unlawfulness of the Banka Slovenije decision shall not affect the validity of the acts carried out for the enforcement of the decision pursuant to this Act.

(3) In the proposal of remedial measures submitted to the court in accordance with the first paragraph of this article, Banka Slovenije shall define the measure to remedy the unlawful consequences sustained by the shareholders and creditors, having regard for the need to appropriately safeguard the interests of the persons who acquired shares, other instruments of ownership, assets, rights or liabilities of the resolution entity or bank under compulsory resolution proceedings in good faith pursuant to Banka Slovenije’s unlawful decision. The court may issue an order calling on Banka Slovenije to supplement its proposal and remedy any deficiencies.

(4) Banka Slovenije shall take the remedial measures referred to in the previous paragraph when the court issues an order confirming the appropriateness of the proposed measures for remedying the unlawful consequences of the decision.

(5) If the exercise of the powers conferred on Banka Slovenije by this Act in resolution or compulsory winding-up proceedings cannot ensure the remediation of unlawful consequences for shareholders and creditors without disproportionately encroaching on the legitimate interests of the persons referred to in the third paragraph of this article, the measures for remedying the consequences of an unlawful decision of Banka Slovenije shall be restricted to compensation for the loss sustained by the shareholders and creditors affected by the unlawful decision.

(6) No objection shall be allowed against the judgments and orders of the Supreme Court of the Republic of Slovenia issued in judicial review proceedings, nor shall any request for the restoration of the original situation, the reopening of the proceedings, or a review be allowed.

Article 260

(Effect on other proceedings)

(1) If an action is brought under this Act before a court of general jurisdiction for damages resulting from Banka Slovenije’s actions in decision-making on issuing or enforcing a resolution or compulsory winding-up decision that is subject to judicial review proceedings, the court deciding on the compensation claim shall stay the proceedings until the decision of the court in judicial review proceedings against the Banka Slovenije decision.

(2) When Banka Slovenije exercises its powers under this Act, neither Banka Slovenije nor the persons acting on its behalf shall be subject to the provisions of the law governing companies on third-party liability for the effects on members of the management body or supervisory body, procurators or proxies.

(3) If the Banka Slovenije decision has become final because no lawsuit was brought against it in judicial review proceedings under this Act, or if the lawsuit was refused, the lawsuit shall be denied by the court deciding on the claim for damages resulting from Banka Slovenije’s unlawful action in decision-making on the issuance or enforcement of a resolution or compulsory winding-up decision.

4.3 Cross-border effects of reorganisation measures and measures for winding-up credit institutions

4.3.1 General provisions

Article 261

(Reorganisation and compulsory winding-up of credit institutions)

(1) For the purposes of subchapter 4.3 of this chapter, reorganisation of a credit institution shall be any procedure or measure that may be conducted, initiated, monitored and supervised by the home Member State’s administrative or judicial authorities in accordance with its regulations with a view to financially restructuring a credit institution.

(2) Reorganisation measures shall in particular include those used to maintain or restore the financial stability of a credit institution and which may affect valid third-party rights, including measures to suspend payments or enforcement measures, measures to reduce liabilities and the resolution actions as defined by this Act. Resolution actions initiated and conducted in connection with a bank pursuant to this Act shall be deemed reorganisation measures in the Republic of Slovenia.

(3) For the purposes of subchapter 4.3 of this chapter, the compulsory winding-up of a credit institution shall be any procedure or measure that may be conducted, initiated, monitored and supervised by the home Member State’s administrative or judicial authorities in accordance with its regulations with a view to the compulsory winding-up of a credit institution as a legal entity.

(4) Compulsory winding-up measures shall in particular include the measures for liquidating a credit institution’s assets, including by settlement or any other similar measure, for the joint account of all creditors of that credit institution. Compulsory winding-up measures initiated and conducted in connection with a bank pursuant to this Act shall be deemed measures for the compulsory winding-up of a credit institution in the Republic of Slovenia.

Article 262

(Subject of regulation)

(1) Subchapter 4.3 of this chapter sets out the rules on:

* the effects of the implementation of Banka Slovenije’s decisions on the resolution and compulsory winding-up of banks and other resolution entities under this Act when such decisions produce effects or are implemented in other Member States;
* the effects of the measures initiated by the relevant judicial or administrative authorities of another Member State within their competences for the purpose of winding-up or reorganising credit institutions established in other Member States, when these effects are generated or produced in the territory of the Republic of Slovenia;
* the law applied in decisions on the legal consequences of the measures for the winding-up and reorganisation of credit institutions in relation to an international element.

(2) The provisions of this part of the Act shall also apply when resolution actions belonging to the area of application of Directive 2014/59/EU are applied in relation to a resolution entity pursuant to this Act or the domestic legislation of another Member State transposing Directive 2014/59/EU.

Article 263

(Competent authorities)

(1) The decision to implement one or more reorganisation measures in relation to a credit institution and the decision to initiate compulsory winding-up proceedings against a credit institution shall fall within the sole competence of the administrative or judicial authorities of the home Member State.

(2) The competence of the home Member State’s authorities referred to in the previous paragraph shall also include the decision on the measures applied to the branches of a credit institution that are established in other Member States.

Article 264

(Notification of authorities of other Member States)

(1) Banka Slovenije shall, without delay and by any means available, notify the competent authorities of the host Member State in which the bank has a branch or in which it directly provides services of its decision under this Act to initiate resolution or compulsory winding-up proceedings against a bank, including a description of the practical effects of such decision.

(2) Banka Slovenije shall send the notification referred to in the previous paragraph before making the decision to initiate the proceedings whenever possible or immediately afterwards.

Article 265

(Publication of summary of decision on extraordinary measure and on initiation of compulsory liquidation proceedings in Official Journal of European Union)

(1) When a bank has a branch or directly provides banking and other mutually recognised financial services in another Member State, Banka Slovenije shall publish its decision to apply one or more resolution actions in relation to the bank in the form of a summary in the Official Journal of the European Union and in two daily newspapers circulated throughout the territory of the host Member State.

(2) The summary referred to in the previous paragraph shall be published in the official language of the host Member State and shall include the following:

1. the grounds and legal basis for issuing the decision,

2. any deadlines for the submission of legal remedies against the decision;

3. the name and address of Banka Slovenije, with an indication that a legal remedy against the decision should be filed with Banka Slovenije.

(3) In the case of a decision to initiate compulsory winding-up proceedings, the summary referred to in the previous paragraph shall also include:

1. the names of the liquidators in compulsory winding-up proceedings; and

2. the time limit for lodging claims and exercising entitlements by creditors in these proceedings, and the legal consequences if a creditor does not meet the aforementioned time limits.

(4) The court that decides on the initiation of bankruptcy proceedings against a bank in accordance with this Act and the law governing financial operations, insolvency proceedings and compulsory winding-up shall publish the decision to initiate bankruptcy proceedings in the form of a summary, in the manner referred to in the first and second paragraphs of this article.

(5) Reorganisation and compulsory winding-up measures taken by an authority of the parent Member State shall be applied and take effect in the Republic of Slovenia under the provisions of this Act even if the authorities of the parent Member State fail to publish their decisions regarding the reorganisation and compulsory winding-up of the credit institution in the manner referred to in the first and second paragraphs of this article, unless otherwise provided by the home Member State’s laws on the omission of publication.

Article 266

(Notification of known creditors)

(1) Banka Slovenije or the liquidator in the compulsory winding-up of a bank shall immediately communicate the decision to initiate reorganisation or compulsory winding-up proceedings at the bank in accordance with this Act to each known creditor of the bank who has a permanent or habitual residence or is established in another Member State.

(2) The notification referred to in the previous paragraph shall be in the Slovenian language, and shall be clearly marked with the words "Invitation to lodge a claim. Time limits to be observed" or "Invitation to submit remarks on claims. Time limits to be observed" in all official languages of the European Union.

(3) In addition to the markings referred to in the previous paragraph, the notification referred to in the first paragraph of this article shall in particular include the following:

1. the name and address of the authority conducting the proceedings,

2. the time limit within which creditors must exercise their entitlements and the consequences of missed time limits; and

3. information on creditors’ rights and duties in connection with the initiation of the proceedings.

Article 267

(Exercise of entitlements by creditors from Member State)

(1) Creditors who have a permanent or habitual residence or are established in another Member State may exercise their entitlements relating to their claims in resolution or compulsory winding-up proceedings under the conditions set out by this Act for the exercise of such entitlements, in the Slovenian language or in the official language of the Member State of their residence or establishment. The liquidator in resolution or compulsory winding-up proceedings may require that the creditor submit a Slovenian translation of the document referred to in the second paragraph of this article.

(2) When creditors enforce their entitlements in the language of another Member State, the document shall be clearly marked with the words "Lodging of claims" or "Submission of remarks on claim" in the Slovenian language.

(3) The document referred to in the first paragraph of this article shall be accompanied by evidence justifying the creditor’s claim and indicating the type of claim, the date when the claim arose, the amount of the claim, and the circumstances justifying the priority of the claim, the existence of substantive entitlements and other circumstances affecting the treatment of the claim in compulsory winding-up proceedings. The provision of this paragraph shall in no way prejudice the rules applicable to the lodgement of claims in bankruptcy proceedings.

(4) The liquidator in the proceedings for the compulsory winding-up of the bank shall inform the creditors of the implementation of the compulsory winding-up proceedings in a regular and appropriate manner.

Article 268

(Competences of liquidator from Member State)

(1) A liquidator in compulsory winding-up proceedings against a credit institution initiated in another Member State (hereinafter: a liquidator from a Member State) may carry out their actions in the Republic of Slovenia within the limits of the competences conferred on them in the Member State, with the exception of those entailing the use of coercive measures or deciding on issues falling within the competence of a public authority, a holder of public authorisations or a court under the regulations of the Republic of Slovenia.

(2) In the performance of their actions in the territory of the Republic of Slovenia in connection with the compulsory winding-up of a credit institution of a Member State, the liquidator from the Member State shall ensure the registration of all facts relating to the proceedings for the winding-up of the Member State credit institution that are kept in such registers in accordance with regulations.

(3) In the exercise of their powers pursuant to the first paragraph of this article, the liquidator from the Member State shall prove their identity by means of a certified copy of the original decision on their appointment issued by the competent authority of the Member State in which the Member State credit institution is established, accompanied by a Slovenian translation.

4.3.2 Recognition and enforcement of reorganisation and compulsory winding-up measures against credit institutions with cross-border effects

Article 269

(Direct effect of decisions of competent authorities of Member States)

(1) The decision of a judicial or administrative authority of a Member State to initiate proceedings or apply measures for the reorganisation or compulsory winding-up of a credit institution of a Member State shall be recognised in the Republic of Slovenia without any specific procedure relating to the recognition and enforcement of such decision.

(2) The legal consequences of the reorganisation or compulsory winding-up proceedings that arise as a result of the decision of a competent authority of another Member State referred to in the previous paragraph shall take effect in the Republic of Slovenia immediately upon becoming enforceable in the Member State, unless the laws of that Member State provide otherwise in respect of the occurrence of cross-border effects in other Member States.

(3) When an authorisation, consent or other formal proceedings are required in connection with resolution actions imposed by a resolution authority from another Member State in order to ensure the effects of such actions in the Republic of Slovenia, Banka Slovenije shall, acting in cooperation with the authority that imposed the aforementioned actions in the Member State, exercise its powers in accordance with this Act to ensure the same effects of these actions in the Republic of Slovenia as are determined by the decision of the Member State’s authority.

(4) Banka Slovenije and other authorities or holders of public authorisations in the Republic of Slovenia shall not examine the merits or lawfulness of the actions imposed by the resolution authority of another Member State under the laws of the home Member State of the aforementioned authority for the purpose of exercising their powers in accordance with the previous paragraph.

(5) The shareholders, holders of other instruments of ownership, creditors and third parties affected by a measure referred to in the first paragraph of this article may exercise legal remedies in relation to the lawfulness of the measures imposed and contest the effects of such measures produced in the territory of the Republic of Slovenia by the exercise of the powers of Banka Slovenije, exclusively under the laws of the home Member State of the authority that imposed the resolution actions. Shareholders, creditors and third parties affected by the measures imposed by the authority of another Member State may not contest or repeal these measures pursuant to the provisions of this Act.

Article 270

(Implementation of reorganisation measures within competence of authorities of other Member States with effect in Republic of Slovenia)

(1) When a reorganisation measure adopted by an authority of another Member State within the scope of its competences and on the basis of domestic law includes the transfer of shares, other instruments of ownership, assets, rights or liabilities, the effects of this reorganisation measure shall be recognised in the Republic of Slovenia with the same content as defined by the measure imposed by the resolution authority of the other Member State, provided that the shares, other instruments of ownership, assets, rights or liabilities:

1. are held and executed in the Republic of Slovenia; or

2. are assessed under the law of the Republic of Slovenia.

(2) When a reorganisation measure adopted by the authority of another Member State within the scope of its competences and on the basis of domestic law includes the conversion or write-down of capital instruments and bail-inable liabilities in accordance with this Act, the effects of this measure shall be recognised in the Republic of Slovenia with the same content as defined by the measure imposed by the resolution authority of the other Member State, provided that:

1. the capital instruments or liabilities are assessed under the law of the Republic of Slovenia; or

2. the write-down and conversion tools are applied in relation to creditors in the Republic of Slovenia.

(3) When an authorisation, consent or other formal proceedings are required in connection with reorganisation measures imposed by an authority from another Member State in order to ensure the effects of such measures in the Republic of Slovenia, Banka Slovenije shall, acting in cooperation with the authority that imposed the aforementioned measures in the Member State, exercise the powers conferred on it by this Act to ensure the following in the Republic of Slovenia:

1. the transfer of shares or other instruments of ownership or assets, rights or liabilities to the recipient, in accordance with applicable regulations;

2. the reduction of the principal of the relevant capital instruments or bail-inable liabilities in accordance with the decision of the Member State’s authority.

Article 271

(Implementation of reorganisation measures within competence of Banka Slovenije with effects in other Member States)

(1) When Banka Slovenije imposes resolution actions that affect other Member States, Banka Slovenije shall work closely together with the resolution authorities of these Member States with a view to achieving resolution effects in accordance with the Banka Slovenije decision and carrying out all procedures that are required by the laws of the aforementioned Member States for that purpose.

(2) When Banka Slovenije imposes resolution actions that include a transfer of shares, other instruments of ownership or assets, rights or liabilities or the write-down or conversion of capital instruments or bail-inable liabilities in which, having regard for the circumstances referred to in the first and second paragraphs of the previous article, effects arise in other Member States, Banka Slovenije shall work closely together with these Member States’ resolution authorities with a view to carrying out all procedures that are required by the laws of the aforementioned Member States and achieving the following effects in accordance with the Banka Slovenije decision:

1. the transfer of shares or other instruments of ownership or assets, rights or liabilities to the recipient; or

2. the reduction of the principal of the relevant liabilities or capital instruments or the conversion of these liabilities and instruments.

(3) Shareholders, holders of other instruments of ownership, creditors and third parties affected by the effects of the exercise of powers by a resolution authority in a Member State that are exercised for the purposes referred to in the second paragraph of this article, may, under the conditions set out in this Act, exercise judicial review of the decisions of Banka Slovenije to impose measures and, in this context, contest the effects of these measures on other Member States, in particular the following:

1. the transfer of shares, other instruments of ownership or assets, rights or liabilities referred to in the previous paragraph; or

2. the reduction of the principal or the conversion of an instrument or liability referred to in the previous paragraph.

Article 272

(Measures in respect of assets, rights, liabilities, shares or other instruments of ownership in third countries)

(1) When it applies resolution or compulsory winding-up tools in relation to a resolution entity’s assets, shares, other instruments of ownership, rights or liabilities that are located in a third country or are subject to the laws of a third country, Banka Slovenije may:

1. request that the management of the resolution entity or the liquidator in the proceedings for the compulsory winding-up of a bank, when appointed, and the recipient to which the assets, rights or liabilities, or shares and other instruments of ownership are being transferred carry out activities necessary to produce the effects of the transfer, write-down, conversion or other measure in a third country;

2. request that the management of the resolution authority or the liquidator in compulsory winding-up proceedings, when appointed, manage the shares, other instruments of ownership, assets or rights, or meet the liabilities on behalf of the recipient until the transfer, write-down, conversion or measure starts to take effect;

3. decide that reasonable expenses incurred by the recipient in the implementation of the measures referred to in points 1 and 2 of this paragraph should be settled in accordance with Article 15 of this Act.

(2) When it assesses that, despite all the necessary measures taken by a resolution entity’s management or by the liquidator in the proceedings for the compulsory winding-up of a bank, when appointed, it is unlikely that a transfer, conversion or measure will become effective in relation to specific assets, shares or other instruments of ownership, rights or liabilities located in a third country or subject to the law of a third country, Banka Slovenije shall not carry out the transfer, write-down, conversion or measure. If it has already decided on the transfer, write-down or conversion or the use of other resolution powers, Banka Slovenije shall issue a new decision determining that the imposed resolution actions shall have no effect on the assets, shares, instruments of ownership, rights or liabilities concerned.

Article 273

(Recognition of reorganisation measures within competence of third-country resolution authority)

(1) Reorganisation measures and compulsory winding-up actions adopted by a third-country competent authority in accordance with the regulations applying in the third country shall be recognised in the territory of the Republic of Slovenia on the basis of a decision recognising and enforcing the measures adopted in accordance with this Act.

(2) Unless otherwise provided by the fifth paragraph of this article, Banka Slovenije shall decide on the recognition and enforcement of reorganisation measures or compulsory winding-up actions taken by the third-country authority in connection with a credit institution or parent undertaking established in a third country that:

1. has subsidiaries established in the Republic of Slovenia or an EU subsidiary established in the Republic of Slovenia; or

2. has assets, rights or liabilities located in the Republic of Slovenia or that are subject to the law of the Republic of Slovenia.

(3) When deciding on the recognition and enforcement of reorganisation and compulsory winding-up measures adopted by a third-country authority, Banka Slovenije shall take into appropriate account the interests of each Member State in which the third-country credit institution or parent undertaking is active, in particular with regard to the possible effect of the recognition or enforcement of third-country measures or proceedings on other members of the group and on the financial stability of these Member States.

(4) Banka Slovenije shall refuse to recognise or enforce reorganisation or compulsory winding-up measures adopted by a third-country authority when it assesses that:

1. the third-country proceedings could have a negative impact on the financial stability of the Republic of Slovenia or another Member State;

2. in relation to an EU branch established in the Republic of Slovenia, an independent resolution action in accordance with Article 167 of this Act is essential to achieving one or more resolution objectives;

3. creditors, including holders of deposits located or paid in the Republic of Slovenia, would not receive the same treatment as third-country creditors with similar legitimate rights in resolution or compulsory winding-up proceedings;

4. the recognition or enforcement of the third-country resolution proceedings would have material fiscal consequences for the Republic of Slovenia;

5. the effect of recognition or enforcement would be contrary to the law of the Republic of Slovenia.

(5) A decision on the recognition and enforcement of resolution actions adopted by a third-country authority shall be reached jointly by a European resolution college when the decision relates to a third-country credit institution or a parent undertaking that:

1. has subsidiary undertakings established in two or more Member States or has two or more EU branches established in two or more Member States that are considered to be significant branches in those Member States, or

2. has assets, rights or liabilities that are in two or more Member States or are subject to the laws of these Member States.

(6) When the recognition and enforcement of resolution actions adopted by a third-country authority are decided by a European resolution college, Banka Slovenije shall participate as a member of the European resolution college provided that the conditions referred to in the second paragraph of this article are met and the college takes appropriate account of the third and fourth paragraphs of this article. Banka Slovenije shall accept the European resolution college’s joint decision recognising and enforcing or refusing to recognise and enforce the resolution actions as final. When no joint decision is taken, Banka Slovenije shall decide itself on the recognition and enforcement of the aforementioned measures in accordance with the third and fourth paragraphs of this article.

(7) The decision to recognise and enforce third-country resolution actions in the Republic of Slovenia shall not affect normal insolvency proceedings conducted in the Republic of Slovenia.

(8) This article shall apply to the recognition and enforcement of resolution actions imposed by third-country resolution authorities unless these relations have been regulated by an agreement concluded in accordance with Article 93(1) of Directive 2014/59/EU.

Article 274

(Power to enforce resolution actions within competence of third-country resolution authority)

When, in accordance with the previous article or an agreement concluded in accordance with Article 93(1) of Directive 2014/59/EU, a decision recognising resolution actions applied in third-country resolution proceedings is adopted, Banka Slovenije may, for the purpose of enforcing these measures in the Republic of Slovenia, decide on:

1. the application of resolution powers in relation to the following:

* the assets of a third-country credit institution or parent undertaking that are in the Republic of Slovenia or are subject to the law of the Republic of Slovenia,
* the assets or liabilities of a third-country credit institution that are held on the books of an EU branch established in the Republic of Slovenia or subject to the law of the Republic of Slovenia, or when the claims arising in connection with such rights and liabilities are enforceable in the Republic of Slovenia;

2. the transfer of shares or other instruments of ownership of a subsidiary established in the Republic of Slovenia;

3. the application of the powers referred to in Articles 149 to 151 of this Act in relation to counterparty rights on the basis of a contract concluded with a subsidiary established in the Republic of Slovenia, when such powers are necessary to implement resolution actions applied in third-country resolution proceedings;

4. the application of the powers to suspend the enforceability of any contractual right to termination, liquidation or immediate maturity of contracts or the generation of effects on the contractual rights of subsidiaries established in the Republic of Slovenia and other group entities when, having regard for the law of the third country, these rights arise in third-country resolution proceedings in relation to resolution entities, parent undertakings of these entities or other group entities and when essential contractual obligations continue to be met, including the obligation to pay, deliver and collateralise.

Article 275

(Notification of authorities of other Member States of resolution actions within competence of Banka Slovenije in relation to branch of third-country bank)

(1) Banka Slovenije or a competent court that decides in resolution or compulsory winding-up proceedings in relation to an EU branch in the Republic of Slovenia shall, before issuing its decision regarding the application of resolution actions or the initiation of compulsory winding-up proceedings against an EU subsidiary, notify the competent authorities of the Member States in which the third-country bank has branches accordingly. The notification shall cite the legal consequences and actual effects of such proceedings.

(2) When the issuance of the decision referred to in the previous paragraph cannot be delayed due to the protection of the interests of the bank’s clients or other public benefits, Banka Slovenije or the competent court shall notify the competent authorities immediately after the issuance of the decision.

(3) In adopting the decision referred to in the first paragraph of this article, Banka Slovenije shall coordinate its actions with the actions of the competent authorities of other Member States. This obligation shall also apply to liquidators in compulsory winding-up proceedings.

4.3.3 Law applicable to the legal consequences of winding-up or resolution actions for a credit institution with an element of a Member State

Article 276

(Applicable law)

Reorganisation and compulsory winding-up measures shall be implemented against a credit institution in accordance with the laws and other regulations and procedures required by the legislation of the home Member State for the reorganisation and compulsory winding-up of credit institutions, unless explicitly provided otherwise for specific cases by this Act.

Article 277

(General rule on legal consequences of winding-up measures)

(1) The law applicable to the legal consequences of proceedings and measures for the reorganisation or compulsory winding-up of a credit institution shall be the law of the country in which the reorganisation or compulsory winding-up of a credit institution is being conducted, unless otherwise provided for specific cases by this Act.

(2) The legal consequences of the reorganisation or compulsory winding-up of a credit institution of another Member State that arise on the basis of the decision of the home Member State’s authority shall have the same effect in the Republic of Slovenia as in the home Member State and shall arise at the moment designated by the law of the home Member State.

Article 278

(Applicable law in respect of contracts)

The law applicable to the legal consequences of the reorganisation or compulsory winding-up of credit institutions with regard to the mutual rights and obligations of the parties to a contract shall be as follows:

1. for employment contracts: the law applied in the Member State to such contracts;

2. for contracts for the use or acquisition of immovable property, including the definition of movable or immovable property: the law of the country in whose territory the immovable property is located;

3. for set-off or netting arrangements: the law of the country that governs these agreements, unless otherwise provided by Articles 137 or 151 of this Act;

4. for repurchase agreements: the law of the country that governs these agreements, unless otherwise provided by Articles 137 or 151 of this Act;

5. for operations and transactions concluded in a regulated market: the law applicable to these transactions;

6. for the rights and obligations of the parties or participants in a payment system or financial market: the law of the country that applies to the payment system or financial market.

Article 279

(Applicable law in respect of rights entered in register)

(1) The law applied to the legal consequences of the reorganisation or compulsory winding-up of credit institutions in respect of the exercise of rights to immovable property, vessels or aircraft that are the subject of registration shall be the law of the country in which that register is maintained.

(2) The law applied to the legal consequences of the reorganisation or compulsory winding-up of credit institutions in respect of the exercise of the rights to securities acquired or transferred by registration to an account or a central depository system shall be the law of the country in which that register, account or central depository system is maintained. The law applied when the rights to a security are acquired or transferred by entering such into an account maintained in a sub-depository of the central depository system shall be the law of the country that applies to the maintenance of the accounts in such sub-depository.

(3) The law referred to in the first and second paragraphs of this article shall also be applied to the assessment of the validity of the disposal of these assets undertaken after the initiation of reorganisation or compulsory winding-up proceedings against a credit institution that is the result of the disposal of the credit institution’s assets in return for consideration through reorganisation or compulsory winding-up measures.

Article 280

(Applicable law applied to pending lawsuits)

The law applied to the legal effects of reorganisation or compulsory winding-up on other proceedings conducted in respect of the assets or rights disposed of by a credit institution shall be exclusively the law of the Member State in which such proceedings are being conducted.

Article 281

(Contestation of legal acts)

Notwithstanding Article 277 of this Act, the law of the home Member State in which the reorganisation or compulsory winding-up proceedings are taking place shall not apply to the contestation of legal acts carried out by a credit institution, if the person in whose favour the legal act was carried out proves that:

1. the law applicable to the legal act is the law of another Member State; and

2. the law of the other Member State does not permit the legal act to be challenged.

CHAPTER 5: PENAL PROVISIONS

Article 282

(Fines for breaches by bank)

(1) A fine of between EUR 25,000 and EUR 250,000 for a misdemeanour shall be imposed on a bank that:

1. fails to send Banka Slovenije, at the latter’s request, the reports, information or documentation on the circumstances of the bank’s operations (the first paragraph of Article 12);

2. fails to pay the annual fee or fails to pay it by the specified deadline (the first paragraph of Article 14);

3. fails to observe the prohibition of distributions referred to in Article 31 of this Act (the first paragraph of Article 31);

4. fails to notify Banka Slovenije without delay of the existence of the circumstances referred to in the second paragraph of Article 31 of this Act (the third paragraph of Article 31);

5. fails by the relevant deadline to submit to Banka Slovenije its views regarding the assessment and the identified substantive impediments to resolvability, and to propose suitable measures to adequately reduce or remove them (the second paragraph of Article 34);

6. fails by the relevant deadline to propose possible measures to meet the minimum requirement for own funds and eligible liabilities in accordance with this Act and the combined buffer requirement, and a timeframe for their implementation (the third paragraph of Article 34);

7. fails to submit to Banka Slovenije a plan for implementing alternative measures (the eighth paragraph of Article 34);

8. fails to notify Banka Slovenije within three business days of changes that could significantly impact the approach to implementing the resolution plan (the third paragraph of Article 39);

9. fails to establish and maintain detailed records on concluded financial contracts or fails to submit these records to Banka Slovenije at its request (the fourth paragraph of Article 39);

10. fails to participate in the formulation or updating of the resolution plan, or to provide the information necessary for the formulation and implementation of the resolution plan (the first paragraph of Article 41);

11. fails to provide own funds or eligible liabilities at least at the levels determined by Banka Slovenije (the first paragraph of Article 49);

12. fails to ensure that the total nominal amount of individual eligible liabilities that are intended for sale to investors that in accordance with the law governing the financial instruments market have the position of retail clients is at least EUR 50,000 (the first paragraph of Article 51);

13. sells eligible liabilities to an investor that in accordance with the law governing the financial instruments market has the position of a retail client, where the total nominal amount of the individual eligible liability is less than EUR 50,000 (the second paragraph of Article 51);

14. fails to report amounts of own funds and other liabilities to Banka Slovenije (the first paragraph of Article 62);

15. fails to publish information relating to amounts of own funds and eligible liabilities at least once a year (the fifth paragraph of Article 62);

16. fails to submit to Banka Slovenije, at the latter’s request, the reports, information or documentation in connection with the circumstances referred to in Article 69 of this Act (the second paragraph of Article 70);

17. fails to establish contact with potential purchasers at Banka Slovenije’s request (the first paragraph of Article 71);

18. fails to publish information on an issued decision to suspend obligations in the prescribed manner (the second paragraph of Article 88);

19. fails to include, in contracts that provide the basis for creating capital instruments, eligible liabilities or other bail-inable liabilities in accordance with this Act, and to which the law of a third country applies, a contractual term recognising that the liability may be subject to write-down and conversion or agreeing to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the application of the write-down and conversion tool (the first paragraph of Article 103);

20. fails to include, in any financial contract, terms by which the contracting parties recognise that Banka Slovenije may exercise powers in relation to the financial contract by which it orders the suspension of rights and obligations (the first paragraph of Article 152);

21. fails to provide or fails to provide on time *ex-ante* and extraordinary *ex-post* contributions for resolution financing (the first paragraph of Article 158).

(2) When the nature of the committed misdemeanour referred to in points 8, 10 and 16 of the previous paragraph is particularly severe on account of the amount of damage caused, the amount of unlawful material benefit gained, the intent of the perpetrator or the intended self-interest, a fine of up to following amounts shall be imposed upon the bank:

1. 10% of the total annual net turnover in the previous financial year, including gross income in the previous financial year, in the form of interest income and similar income, income from shares and other variable- and fixed-yield securities, and commissions and fees receivable in accordance with Article 316 of Regulation 575/2013/EU, whereby the total net turnover evident from the consolidated financial statements of the EU parent undertaking is taken into account for a bank branch of an EU parent undertaking; or

2. twice the amount of the profits gained or losses avoided by the breach, where such can be determined, when this amount exceeds the amount referred to in the previous point.

(3) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a member of a bank’s management board who breaches their duties as a management board member set out by the law governing banking, where this results in a breach referred to in the first paragraph of this article.

(4) A fine of between EUR 2,500 and EUR 10,000 shall be imposed on a member of a bank’s supervisory board who breaches their duties as a supervisory board member set out by the law governing banking, and this results in a breach referred to in the first paragraph of this article.

(5) When the nature of the committed misdemeanour referred to in the third and fourth paragraphs of this article is particularly severe on account of the amount of damage caused, the amount of unlawful material benefit gained, or the intent of the perpetrator or the intended self-interest, a fine of up to EUR 5,000,000 shall be imposed upon the member of the bank’s management board or supervisory board.

(6) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a person employed at a bank, a group entity or a branch that fails to submit to Banka Slovenije, at the latter’s request, the reports, information or documentation referred to in the first paragraph of Article 12 of this Act (the second paragraph of Article 12).

(7) A fine of between EUR 2,500 and EUR 30,000 for a misdemeanour shall be imposed on a member of a bank’s management body who fails to notify Banka Slovenije without delay if they believe that the bank is failing or is likely to fail, having regard for the reasons referred to in Article 69 of this Act (the first paragraph of Article 70).

(8) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a person employed at a bank who fails to submit to Banka Slovenije, at the latter’s request, the reports, information or documentation relating to the circumstances referred to in Article 69 of this Act (the second paragraph of Article 70).

(9) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a member of a bank’s management body who fails to submit to Banka Slovenije a report on the progress of the implementation of the business reorganisation plan at least every six months (the fifth paragraph of Article 107).

(10) A fine of between EUR 2,500 and EUR 30,000 for a misdemeanour shall be imposed on a special manager of a bank who takes measures to increase the bank’s share capital, reorganise the bank, change the bank’s share ownership structure or make changes to the bank’s articles of association without the prior consent of Banka Slovenije (the fourth paragraph of Article 142).

(11) A fine of between EUR 2,500 and EUR 30,000 for a misdemeanour shall be imposed on a special manager of a bank who fails to submit to Banka Slovenije a report on the financial situation and on the bank’s business conditions under special management and other required documents (the first paragraph of Article 143).

(12) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a special manager of a bank who fails to report to Banka Slovenije on the implementation of resolution actions or fails to inform Banka Slovenije without delay of all material circumstances that impact the bank’s business conditions under special management and on the realisation of resolution objectives (the second paragraph of Article 143).

(13) A fine of between EUR 2,500 and EUR 30,000 for a misdemeanour shall be imposed on a special manager of a bank who fails to immediately inform Banka Slovenije, the Commission for the Prevention of Corruption and the law enforcement authorities of any suspicion of corrupt and criminal acts that they have observed within the scope of their work or have been informed of (the third paragraph of Article 143).

(14) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a member of the management board or the procurator of a bank who, after being served with a decision on the initiation of compulsory liquidation proceedings against the bank, fails to grant the liquidator access to all of the bank’s business and other documentation, fails to draw up a handover report, or fails to provide all clarifications and additional reports and information on the bank’s operations at the liquidator’s request (the second paragraph of Article 175).

(15) A fine of between EUR 2,500 and EUR 30,000 for a misdemeanour shall be imposed on a liquidator who:

1. fails to submit a report on the bank’s financial situation and a compulsory liquidation plan to Banka Slovenije within four months of the initiation of compulsory liquidation proceedings (the first paragraph of Article 193);

2. fails to obtain Banka Slovenije’s prior approval to carry out management activities (the fifth paragraph of Article 198);

3. fails to report to Banka Slovenije on the implementation of compulsory liquidation measures and powers within the specified time limits (the first paragraph of Article 201);

4. fails to inform Banka Slovenije without delay of all material circumstances that impact the business conditions of the bank in compulsory liquidation and the realisation of the objectives of compulsory liquidation (the second paragraph of Article 201);

5. fails to inform Banka Slovenije, the Commission for the Prevention of Corruption and the law enforcement authorities without delay of any suspicion of corrupt or criminal acts that they have observed within the scope of their work or have been informed of (the third paragraph of Article 201);

6. fails to obtain the prior approval of Banka Slovenije for settling a bank’s liabilities by netting or by entering into a settlement agreement (the fifth paragraph of Article 217);

7. fails to obtain approval from Banka Slovenije before ordering services for which the total costs exceed EUR 10,000 (the second paragraph of Article 222).

Article 283

(Fines for breaches by other persons)

(1) A fine of between EUR 25,000 and EUR 250,000 for a misdemeanour shall be imposed on a legal person that:

1. fails to submit to Banka Slovenije, at the latter’s request, reports, information or documentation on circumstances relating to the operations of a group entity or the operations of a branch, or information that it requires in connection with the exercise of powers and tasks with regard to resolution and compulsory winding-up proceedings at the bank (the first and third paragraphs of Article 12);

2. fails to establish and maintain detailed records on concluded financial contracts or fails to submit these records to Banka Slovenije at its request (the fourth paragraph of Article 39);

3. fails to ensure that the total nominal amount of individual eligible liabilities that are intended for sale to investors that in accordance with the law governing the financial instruments market have the position of retail clients is at least EUR 50,000 (the first paragraph of Article 51);

4. sells eligible liabilities to an investor that in accordance with the law governing the financial instruments market has the position of a retail client, where the total nominal amount of the individual eligible liability is less than EUR 50,000 (the second paragraph of Article 51);

5. fails to submit to Banka Slovenije, at the latter’s request, the reports, information or documentation in connection with the circumstances referred to in Article 69 of this Act (the second paragraph of Article 70);

6. fails to include, in contracts that provide the basis for creating capital instruments, eligible liabilities or other bail-inable liabilities in accordance with this Act, and to which the law of a third country applies, a contractual term recognising that the liability may be subject to write-down and conversion or agreeing to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the application of the write-down and conversion tool (the first paragraph of Article 103);

7. fails to publish a new issue of debt instruments in the prescribed manner in the list of issued debt instruments (the sixth paragraph of Article 230).

(2) When the nature of the committed misdemeanour referred to in point 5 of the previous paragraph is particularly severe on account of the amount of damage caused, the amount of unlawful material benefit gained, the intent of the perpetrator or the intended self-interest, a fine of up to following amounts shall be imposed upon the entity referred to in the previous paragraph:

1. 10% of the total annual net turnover in the previous financial year, including gross income in the previous financial year, in the form of interest income and similar income, income from shares and other variable- and fixed-yield securities, and commissions and fees receivable in accordance with Article 316 of Regulation 575/2013/EU, whereby the total net turnover evident from the consolidated financial statements of the parent undertaking is taken into account when the legal person is a branch of a parent undertaking; or

2. twice the amount of the profits gained or losses avoided by the breach, where such can be determined, when this amount exceeds the amount referred to in the previous point.

(3) A fine of between EUR 2,500 to EUR 10,000 for a misdemeanour shall be imposed on the responsible person of the entity referred to in the first paragraph of this article that commits a misdemeanour referred to in the first paragraph of this article.

(4) A fine of between EUR 40 and EUR 5,000 for a misdemeanour shall be imposed on an individual who fails to submit to Banka Slovenije, at the latter’s request, the information that Banka Slovenije requires in connection with the exercise of powers and tasks in relation to resolution and compulsory winding-up proceedings at a bank (the third paragraph of Article 12).

(5) A fine of between EUR 2,500 and EUR 30,000 for a misdemeanour shall be imposed on a member of the management body of an entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act who fails to notify Banka Slovenije without delay that they believe that the entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act is failing or is likely to fail, having regard for the reasons referred to in Article 69 of this Act (the first paragraph of Article 70).

(6) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a member of the management body or a person employed by an entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act who fails to submit to Banka Slovenije, at the latter’s request, the reports, information or documentation relating to the circumstances referred to in Article 69 of this Act (the second paragraph of Article 70).

(7) When the nature of the committed misdemeanour referred to in the fifth and sixth paragraphs of this article is particularly severe on account of the amount of damage caused, the amount of unlawful material benefit gained, or the intent of the perpetrator or the intended self-interest, a fine of up to EUR 5,000,000 shall be imposed upon the member of the management body of the entity referred to in points 2 to 4 of the first paragraph of Article 2 of this Act.

(8) A fine of between EUR 2,500 and EUR 10,000 for a misdemeanour shall be imposed on a special manager who fails to submit to Banka Slovenije a report on the progress of the implementation of the business reorganisation plan at least every six months (the fifth paragraph of Article 107).

Article 284

(Fine imposed in fast-track procedure)

For misdemeanours referred to in this Act, a fine that is higher than the minimum prescribed fine set out by this Act may also be imposed in a fast-track procedure.

CHAPTER 6: TRANSITIONAL AND FINAL PROVISIONS

Article 285

(Contractual bail-in)

(1) The requirement referred to in the first paragraph of Article 103 of this Act shall not apply to contracts entered into before 25 June 2016.

(2) The requirement referred to in the first paragraph of Article 103 of this Act shall apply to contracts entered into after 25 June 2016 inclusive that by the time of the entry into force of this Act had not been performed or had not terminated, after the expiry of six months from the entry into force of this Act.

Article 286

(Application of misdemeanours provisions)

Until the provisions of the law governing misdemeanours relating to the amounts and ranges of fines are amended, the amounts and ranges of fines laid down by Articles 282 and 283 of this Act shall apply, notwithstanding the provisions of the law governing misdemeanours.

Article 287

(Transitional provision regarding compliance with minimum requirement)

(1) Article 49 of this Act notwithstanding, Banka Slovenije shall determine appropriate transitional periods within which resolution entities must comply with the minimum requirement for own funds and eligible liabilities in accordance with Articles 57 to 60 of this Act, such that the resolution entities ensure compliance with the minimum requirement for own funds and eligible liabilities by no later than 1 January 2024.

(2) For the purposes of the previous paragraph, Banka Slovenije shall determine intermediate targets for ensuring compliance with the minimum requirement for own funds and eligible liabilities in accordance with Articles 57 to 60 of this Act, which resolution entities must comply with by 1 January 2022. The intermediate targets shall generally provide for a linear increase in own funds and eligible liabilities for the purpose of converging on the minimum requirement for own funds and eligible liabilities.

(3) The third to sixth paragraphs of Article 64 of this Act shall apply *mutatis mutandis* to the determination of the transitional period referred to in this article.

Article 288

(Entry into force of exclusion of liabilities)

The exclusion referred to in the fifth paragraph of Article 101 of this Act shall not apply to liabilities referred to in point 8 of the second paragraph of Article 101 of this Act that were created before the entry into force of this Act, when those liabilities rank below ordinary unsecured liabilities under the regulations governing normal insolvency proceedings in connection with these entities on the day of the entry into force of this Act.

Article 289

(Entry into force for financial contracts)

The provision of point 1 of the second paragraph of Article 152 of this Act shall apply to financial contracts that were entered into before the entry into force of this Act, when the resolution entity enters into an agreement after the entry into force of this Act that modifies an applicable obligation under a financial contract that was entered into before the entry into force of this Act.

Article 290

(Consideration of annual fee already paid)

When issuing a decision on the payment of the annual fee referred to in Article 14 of this Act, Banka Slovenije shall take account of any annual fee payments referred to in the first paragraph of Article 14 of this Act already charged and received by the entry into force of this Act, and shall order banks and EU branches to merely pay the shortfall on the full amount of the annual fee.

Article 291

(Classification into new class)

For the purpose of the repayment of creditors’ claims in bankruptcy proceedings, only claims from debt instruments that meet the conditions pursuant to this Act and were issued after the entry into force of this Act and debt instruments that were issued before the entry into force of this Act, provided that, in accordance with the Resolution and Compulsory Winding-Up of Banks Act (Official Gazette of the Republic of Slovenia, Nos. 44/16, 71/16 [constitutional court decision], 9/19 and 72/19 [ZPSVIKOB]; hereinafter: the ZRPPB), in the event of bankruptcy they could have been classified into the priority class referred to in point 9 of the second paragraph of Article 207 of the ZRPPB, may be classified under the priority class referred to in point 9 of the second paragraph of Article 230 of this Act.

Article 292

(Repeal and continuing validity of regulations)

(1) On the day that this Act enters into force, the Resolution and Compulsory Winding-Up of Banks Act (Official Gazette of the Republic of Slovenia, Nos. 44/16, 71/16 [constitutional court decision], 9/19 and 72/19 [ZPSVIKOB]) shall cease to be in force.

(2) The Regulation on the application of the Guidelines on the specification of measures to reduce or remove impediments to resolvability and the circumstances in which each measure may be applied under Directive 2014/59/EU (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(3) The Regulation on the application of the Guidelines on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail under Article 32(6) of Directive 2014/59/EU (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(4) The Regulation on the application of the Guidelines on the determination of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on one or more financial markets under Article 42(14) of Directive 2014/59/EU (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(5) The Regulation on the application of the Final Guidelines concerning the interrelationship between the BRRD sequence of write-down and conversion and CRR/CRD (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(6) The Regulation on the application of the Final Guidelines on the rate of conversion of debt to equity in bail-in (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(7) The Regulation on the application of the Guidelines on the minimum list of services or facilities that are necessary to enable a recipient to operate a business transferred to it under Article 65(5) of Directive 2014/59/EU (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(8) The Regulation on the application of the Guidelines on factual circumstances amounting to a material threat to financial stability and on the elements related to the effectiveness of the sale of business tool under Article 39(4) of Directive 2014/59/EU (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(9) The Regulation on the application of the Final Guidelines on the treatment of shareholders in bail-in or the write-down and conversion of capital instruments (Official Gazette of the Republic of Slovenia, No. 48/17) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(10) The Regulation on the application of the Guidelines on the provision of information in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU (Official Gazette of the Republic of Slovenia, No. 60/16) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

(11) The Regulation on the calculation of EU branches’ contributions for the purposes of resolution and annual fees in connection with resolution and compulsory winding-up (Official Gazette of the Republic of Slovenia, No. 60/16) shall remain in force as regulations issued pursuant to the fourth paragraph of Article 14 and the fourth paragraph of Article 159 of this Act.

(12) The Regulation on the application of the Final Guidelines on the minimum criteria to be fulfilled by a business reorganisation plan (Official Gazette of the Republic of Slovenia, No. 50/16) shall remain in force as regulations issued pursuant to the third paragraph of Article 9 of this Act.

Article 293

(*Mutatis mutandis* application to investment firms)

Until the entry into force of a law governing the resolution of investment firms, Chapters 1 and 2 of this Act shall apply *mutatis mutandis* to the resolution of investment firms, whereby the tasks of the resolution authority for investment firms are performed by the agency responsible for financial markets.

Article 294

(Entry into force)

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

No. 450-03/21-3/15

Ljubljana, 27 May 2021

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National Assembly
of the Republic of Slovenia

Igor Zorčič

president